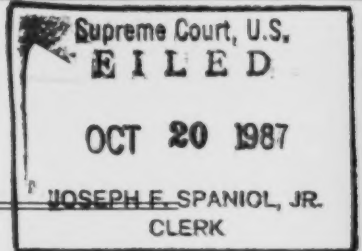


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NO. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1987

①

COMMONWEALTH OF PENNSYLVANIA,  
Petitioner  
v.

MICHAEL CEPHAS,  
Respondent

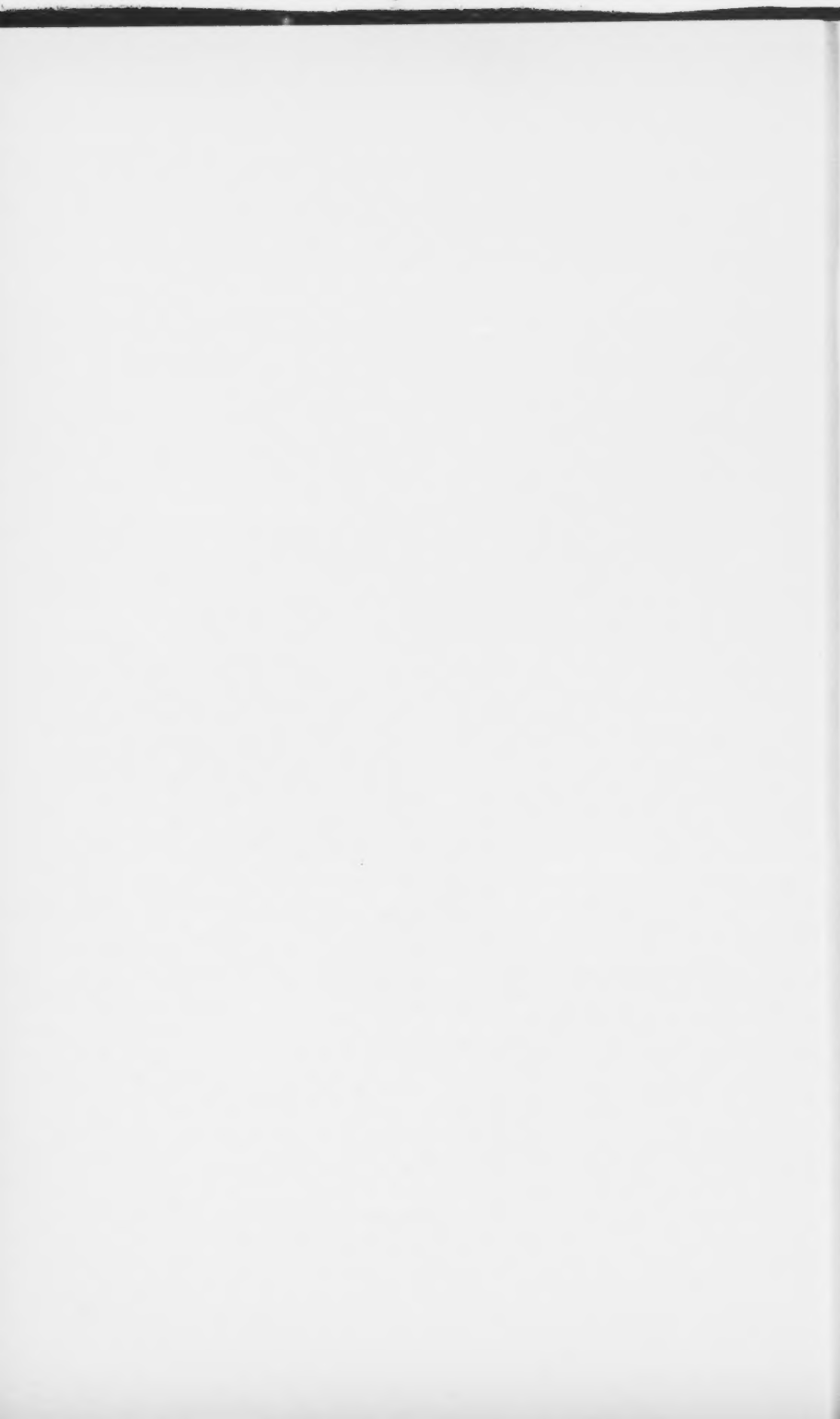
PETITION FOR WRIT OF CERTIORARI TO  
THE SUPERIOR COURT OF PENNSYLVANIA

GAELE McLAUGHLIN BARTHOLD  
Deputy District Attorney  
(Counsel of Record)  
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October 19, 1987

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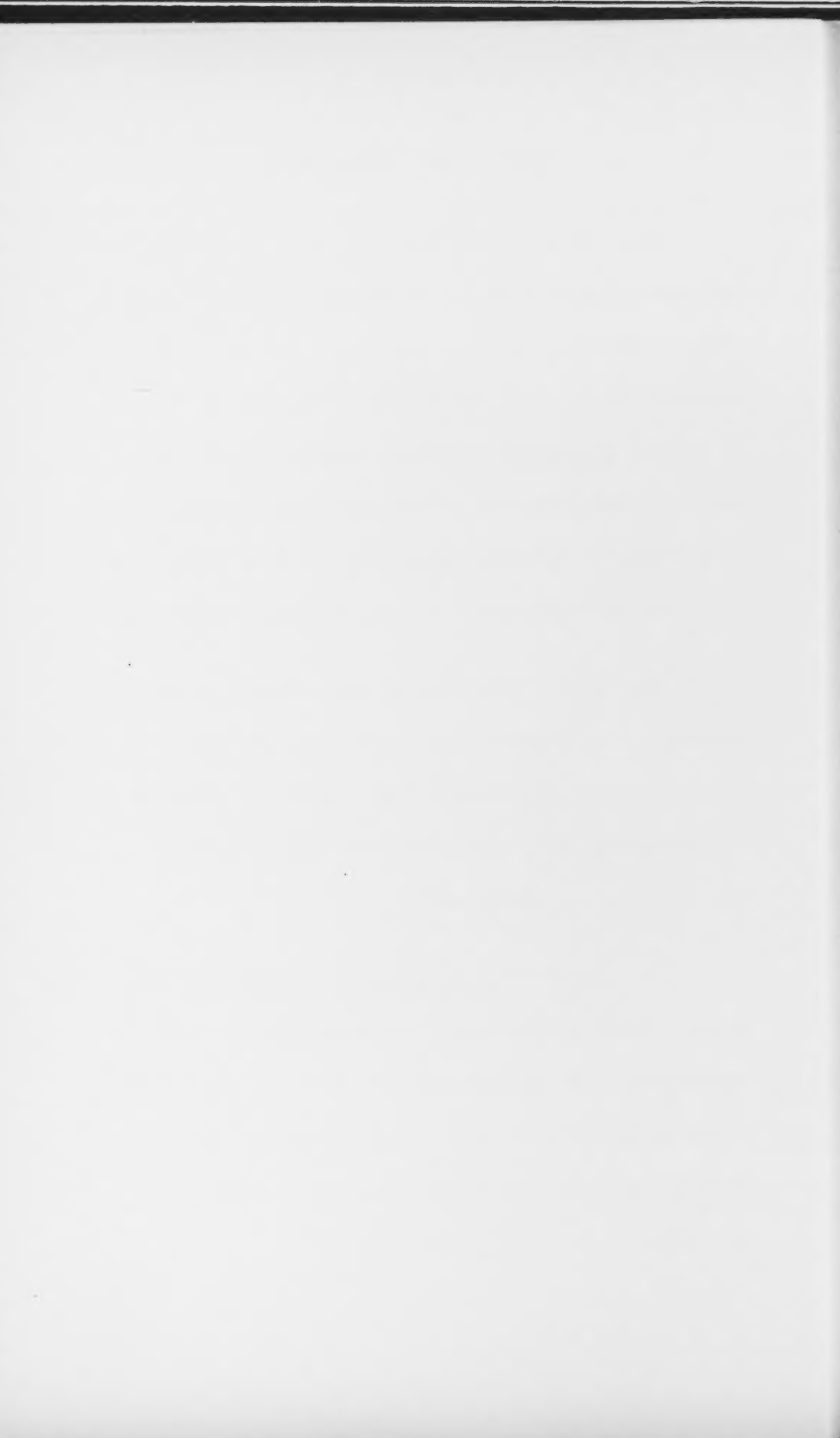


## QUESTIONS PRESENTED

1. Where the police act in good faith, scrupulously comply with all of Miranda's requirements, and a suspect makes what objectively and reasonably appears to be a valid Miranda waiver, should that suspect's subsequent voluntary statement be suppressed simply because he did not subjectively understand the Miranda warnings?

2. Does the fifth amendment exclusionary rule require suppression of evidence where there has been no police illegality and suppression will serve no deterrent purpose?

3. Does the Johnson v. Zerbst formula, requiring the "intentional relinquishment or abandonment of a known right" when a criminal defendant waives "fundamental constitutional rights," apply to Miranda's prophylactic rule?



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Court of Common Pleas of  
Philadelphia County

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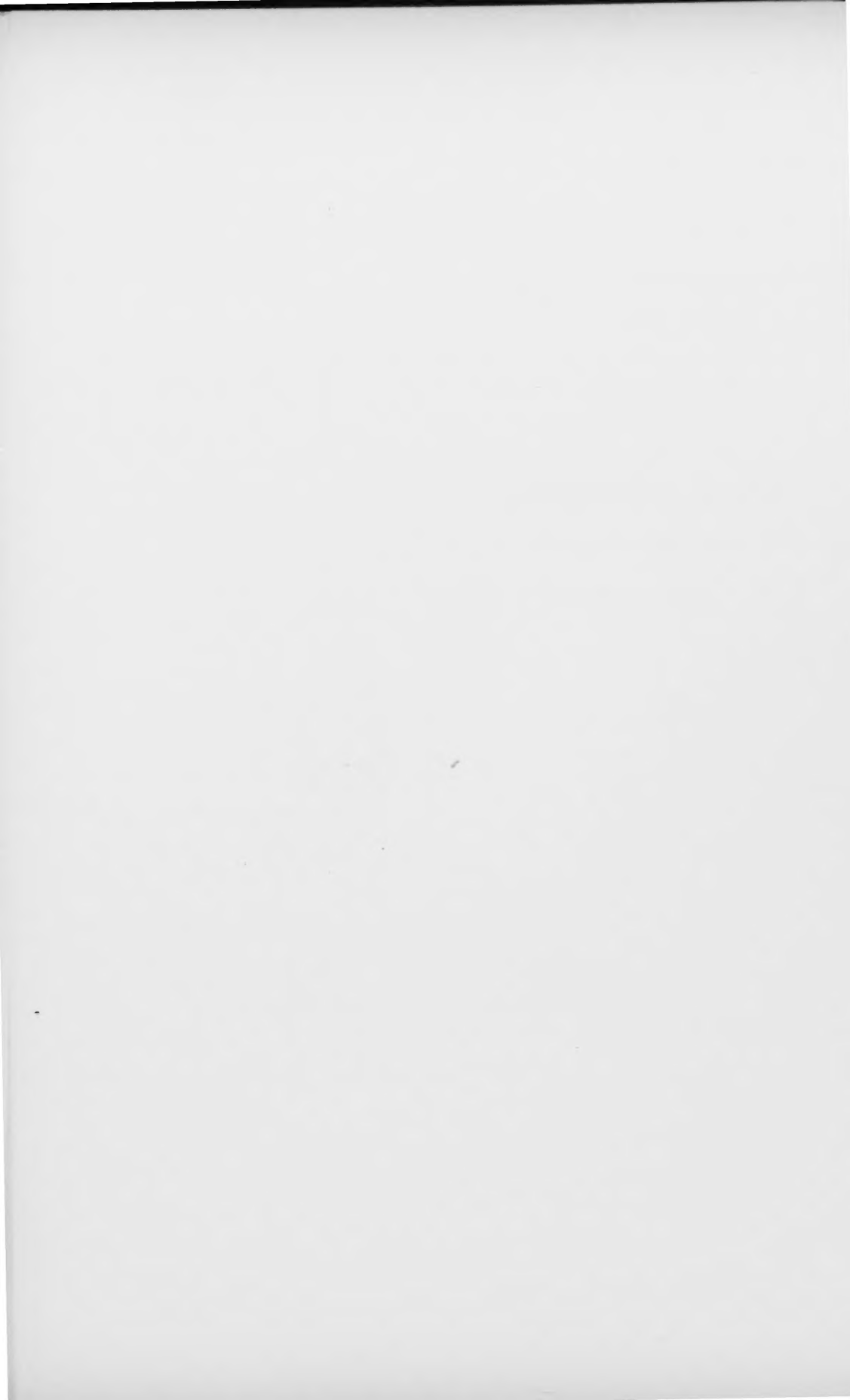
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Federal Constitution

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NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1987

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COMMONWEALTH OF PENNSYLVANIA,  
Petitioner  
v.

MICHAEL CEPHAS,  
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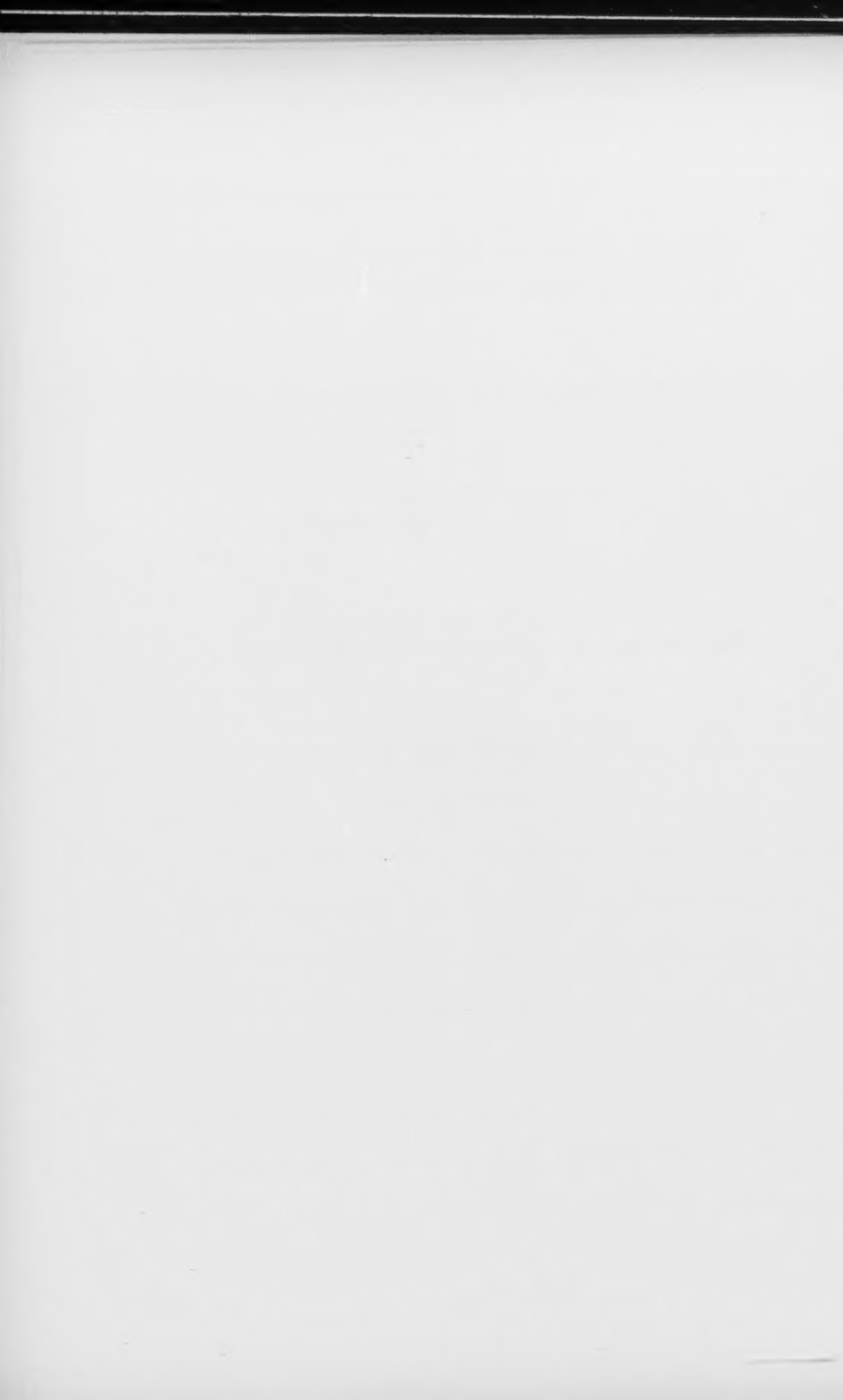
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PETITION FOR WRIT OF CERTIORARI TO  
THE SUPERIOR COURT OF PENNSYLVANIA

---

Petitioner, the Commonwealth of Pennsylvania, respectfully requests that a Writ of Certiorari issue to review the final Judgment and Opinion of the Superior Court of Pennsylvania, which is the highest state court to render a decision in this case.

The Pennsylvania Superior Court entered its decision on reconsideration on March 4, 1987. Petitioner then timely applied to the Pennsylvania Supreme Court



for discretionary state court review. By Order dated August 20, 1987, and entered September 1, 1987, the Pennsylvania Supreme Court denied review (Order attached as Appendix A). Because under Pennsylvania law the Supreme Court's Order was not a decision on the merits,<sup>1</sup> the writ of certiorari, if granted, is appropriately directed to the intermediate state appellate court.<sup>2</sup>

#### OPINIONS BELOW

The Judgment and Opinion of the Pennsylvania Superior Court, which are unofficially reported at 522 A.2d 63 (1987), are set forth in full in Appendix B at 1B-16B. The unreported Judgment and Opinion of the

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<sup>1</sup>Commonwealth v. Britton, 509 Pa. 620, 506 A.2d 895 (1986); Dayton v. Dayton, 509 Pa. 632, 506 A.2d 901 (1986).

<sup>2</sup>See e.g. Pennsylvania v. Henderson, 446 U.S. 905 (1980).



Superior Court which were filed on December 15, 1986 but withdrawn on January 26, 1987, are set forth in full at Appendix C at 1C-15C. The Oral Findings of Fact and Conclusions of Law by the Philadelphia Court of Common Pleas, entered on July 25, 1984, are set forth in full in Appendix D at 1D-10D.

#### STATEMENT OF JURISDICTION

The Superior Court of Pennsylvania entered Judgment on March 4, 1987. The Pennsylvania Supreme Court, by Order dated August 20, 1987, but entered on September 1, 1987, declined to exercise authority in this case.

#### CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Five, which provides in pertinent part:

No person ... shall be compelled in any criminal case to be a witness against himself ...



United States Constitution, Amendment  
Fourteen Due Process Clause, provides:

... [n]or shall any state deprive  
any person of life, liberty, or  
property, without due process of  
law ...

#### STATEMENT OF THE CASE

On September 29, 1983, a young  
retarded woman was raped inside the chapel  
of the Temple University Hospital. Based  
on information from the victim, Philadel-  
phia police located respondent, arrested  
him and transported him to the Police  
Department Sex Crimes Unit (N.T. 4/5/84,  
18). While at the Sex Crimes Unit, Offi-  
cer Frank Potts interviewed respondent  
regarding standard biographical informa-  
tion. Following this interview, Officer  
Potts placed respondent in a detention  
room where respondent was provided with  
soda and cookies as he had requested (id.  
at 36-41, 61).



Twenty minutes later, Police Officer Carol Keenan escorted respondent from the detention room to her lieutenant's office. There she properly advised him of his constitutional rights, and informed him that he was being questioned concerning the rape inside the Temple University Hospital Chapel on September 29, 1983 (id. at 44). Respondent's answers to questions concerning his constitutional rights, as they appear on the standard police interrogation card, indicated to Officer Keenan that he understood his rights and voluntarily wanted to waive them. Although respondent had previously been acting out, and had claimed to be the District Attorney's son (id. at 58-59), his demeanor when answering the Miranda questions appeared normal and calm (id. at 43-44, 56).

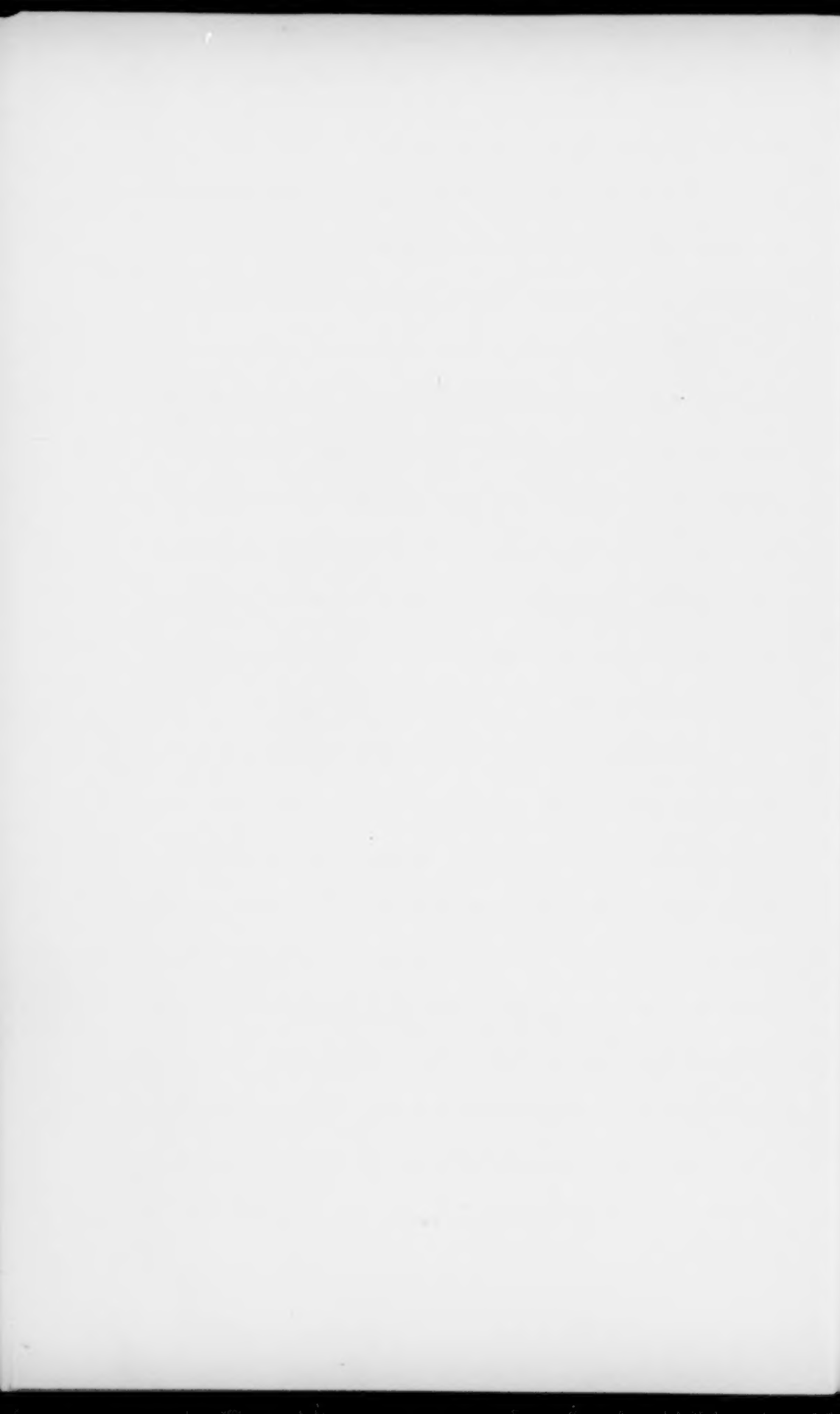
Respondent's statement revealed information consistent with the victim's physical description. When asked, however, if he



met a young lady the previous week and had sex with her inside the Chapel, respondent became evasive and responded, "No, most likely I did not" (id. at 53-56).

Given respondents' evasive answer, Keenan ceased questioning and returned him to the detention room. She then told respondent that she was going to seek the victim's identification of him through use of a photo spread (id. at 57-58, 62). The victim, however, was unable to make an identification.

Officer Keenan returned forty-five minutes later and found respondent yelling and kicking the door. When she opened the door and removed respondent from the room, his calm demeanor returned. Officer Keenan next took respondent to the lieutenant's office and rewarned him. He again gave the appropriate responses to her questions concerning his understanding of his Miranda rights, and indicated that he wished to



make a statement (id. at 58-60). He agreed to sit down to give the statement once police complied with his request for a cigarette (id. at 60-61).

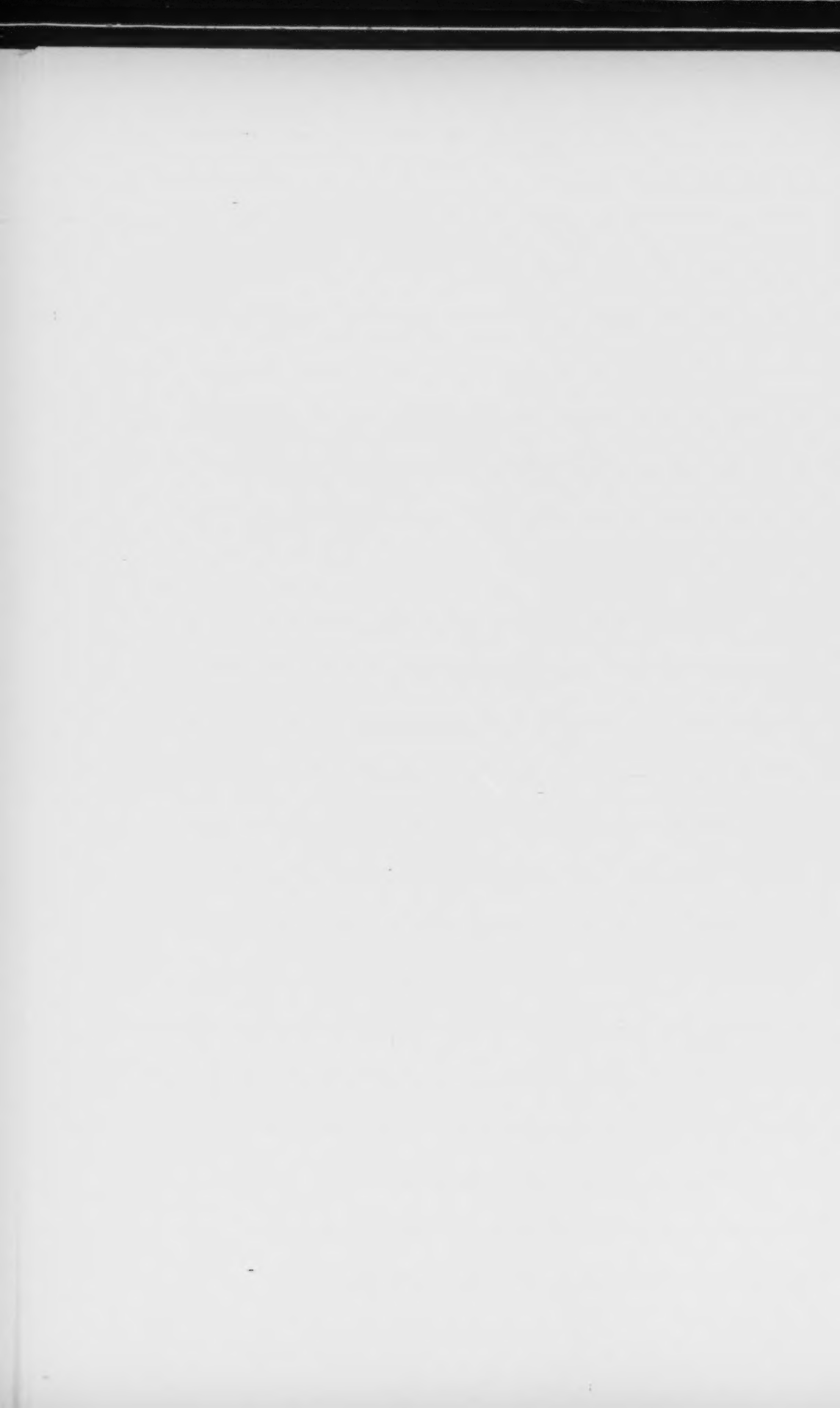
Respondent then asked Officer Keenan whether the rape victim had identified him. When Officer Keenan refused to answer directly, respondent became very serious and began to talk about the rape (id. at 62). Although he had been acting in a strange fashion while in the detention room, he was calm during questioning and spoke in a normal tone of voice (id. at 71). Keenan believed from that demeanor that he understood his constitutional rights when he waived them (id. at 74). The statement which followed, although exculpatory on its face, contained details only the rapist would have known (id. at 62-65). For example, it correctly stated that the victim was a black girl, in her



early twenties, and walked with a limp (id. at 64).

After the interview ended, respondent refused to sign the interview sheet. He explained that he did not want to be forced, and that he would just tell the judge that this was his statement (id. at 62-65, 66-67).

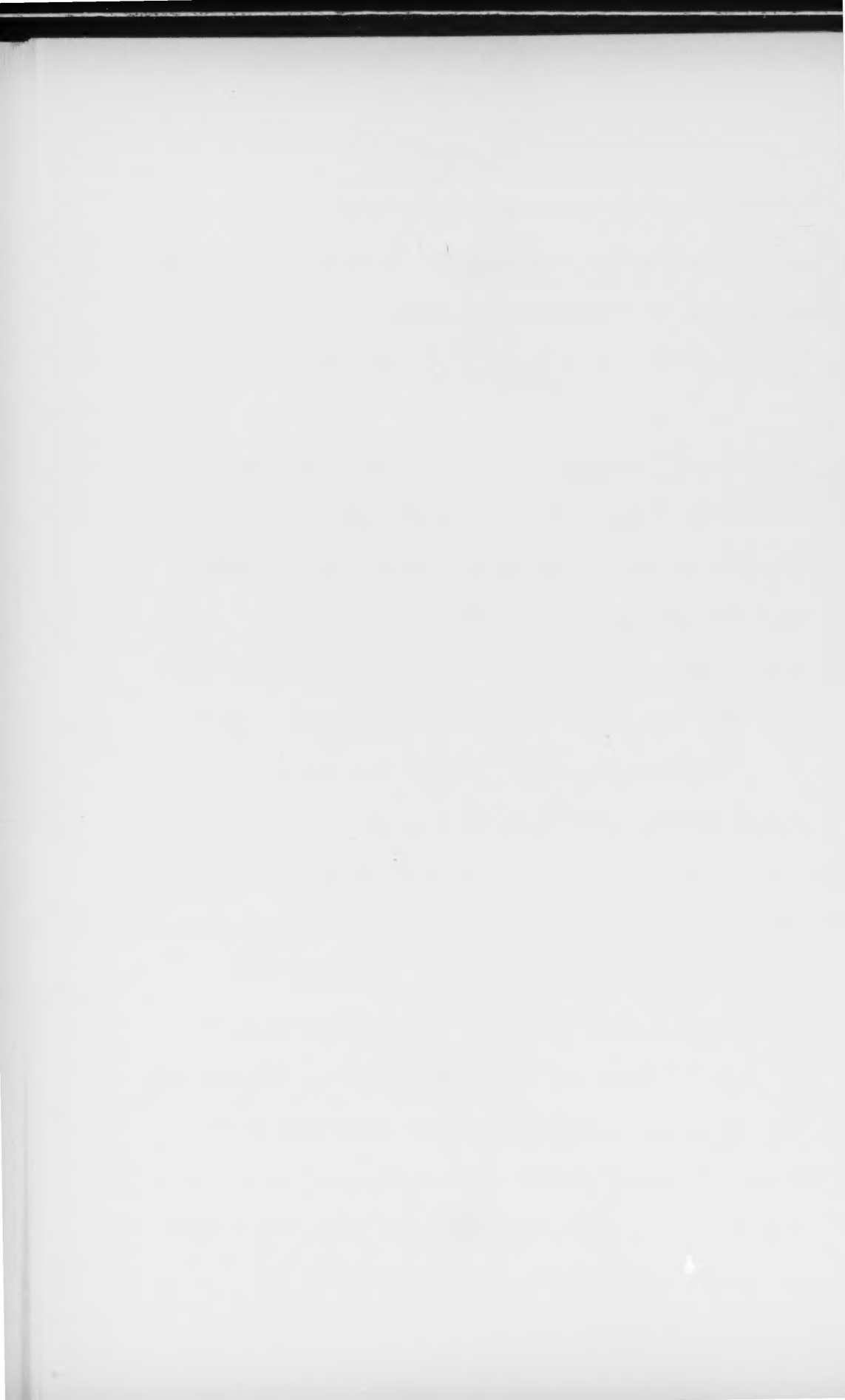
Respondent moved to suppress his statements on the ground that he was not competent to waive his Miranda rights. At the suppression hearing, he did not testify or present any evidence contradicting the above-stated evidence offered by the police officers. Rather, respondent relied exclusively on psychiatric evidence to support a claim of incompetency. Respondent's witness, Dr. Perry Berman, a consultant for the Defender Association, offered the general conclusion that respondent's mental illness prevented him "from being able to really understand and/or act on what he



understood in the [Miranda] warnings," and contended that respondent "did not have the capacity to refrain or restrict himself" in talking to the police (id. at 124, 140).

On April 19, 1984, the Honorable Bernard J. Avellino, of the Philadelphia Court of Common Pleas, granted respondent's motion to suppress and subsequently made oral findings to support his ruling. Judge Avellino specifically found that respondent did not properly waive his Miranda rights.

On December 15, 1986, the Superior Court panel affirmed the trial court, holding that whether the police complied with Miranda was "irrelevant." It further ruled that a voluntary statement must be suppressed if the defendant was "incompetent" to make a knowing and intelligent waiver of his Miranda warnings. The Commonwealth timely sought panel reconsideration or full Superior Court review of the panel's order, in light of this Court's decision in



Colorado v. Connelly, 107 S.Ct. 515 (1987).

On reconsideration, the panel affirmed the suppression order, stating that Connelly only concerned the voluntariness of a statement and did not affect the distinct issue of whether a defendant knowingly and intelligently waived his Miranda rights. Petitioner timely asked the Pennsylvania Supreme Court to allow an appeal. By an Order dated August 20, 1987, but entered September 1, 1987, the Pennsylvania Supreme Court denied review. This timely petition for a writ of certiorari followed.



REASONS FOR GRANTING THE WRIT

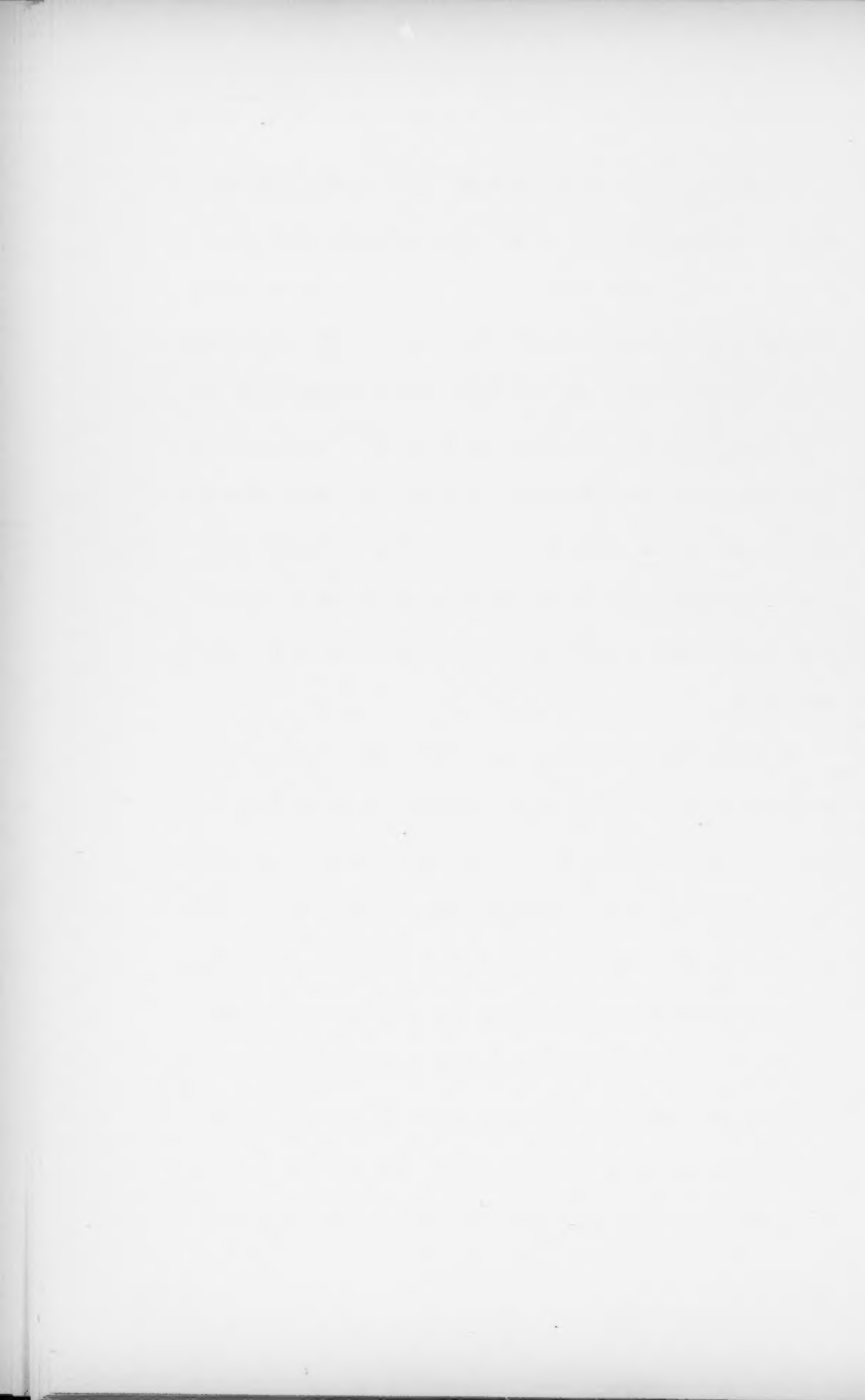
WHERE THE POLICE ACT IN GOOD FAITH AND FULLY COMPLY WITH MIRANDA, A SUSPECT'S VOLUNTARY STATEMENT SHOULD NOT BE SUPPRESSED SIMPLY BECAUSE SUBSEQUENT PSYCHIATRIC EVIDENCE ESTABLISHES THAT THE SUSPECT DID NOT SUBJECTIVELY UNDERSTAND THE MIRANDA WARNINGS.

This Court should grant certiorari to consider an important question in Miranda jurisprudence: whether, despite full compliance with Miranda's requirements and good faith police conduct, a voluntary statement must be suppressed because a suspect subjectively did not understand the prophylactic warnings. Because exclusion of a voluntary statement obtained in the absence of police misconduct serves no valid Miranda purpose, does not vindicate any constitutional right, and will needlessly obstruct the truth seeking process, this Court must grant review.



Here, the undisputed and credited evidence established that the police scrupulously followed the law. Detective Keenan twice gave respondent full Miranda warnings. When questioned as to his understanding of the Miranda warnings, respondent twice gave appropriate responses indicating his desire to speak with the police. The detective took statements from respondent only after she believed that he had made valid Miranda waivers.

The detective's belief was objectively reasonable. When respondent made his statements, he evidenced an understanding of his legal situation. Respondent knew that the people questioning him were police and that he was being questioned as a rape suspect (N.T. 4/5/84, 159-60). He showed appropriate concern that the victim would identify him as the rapist (id. at 62-67), and further showed a reasonable understanding

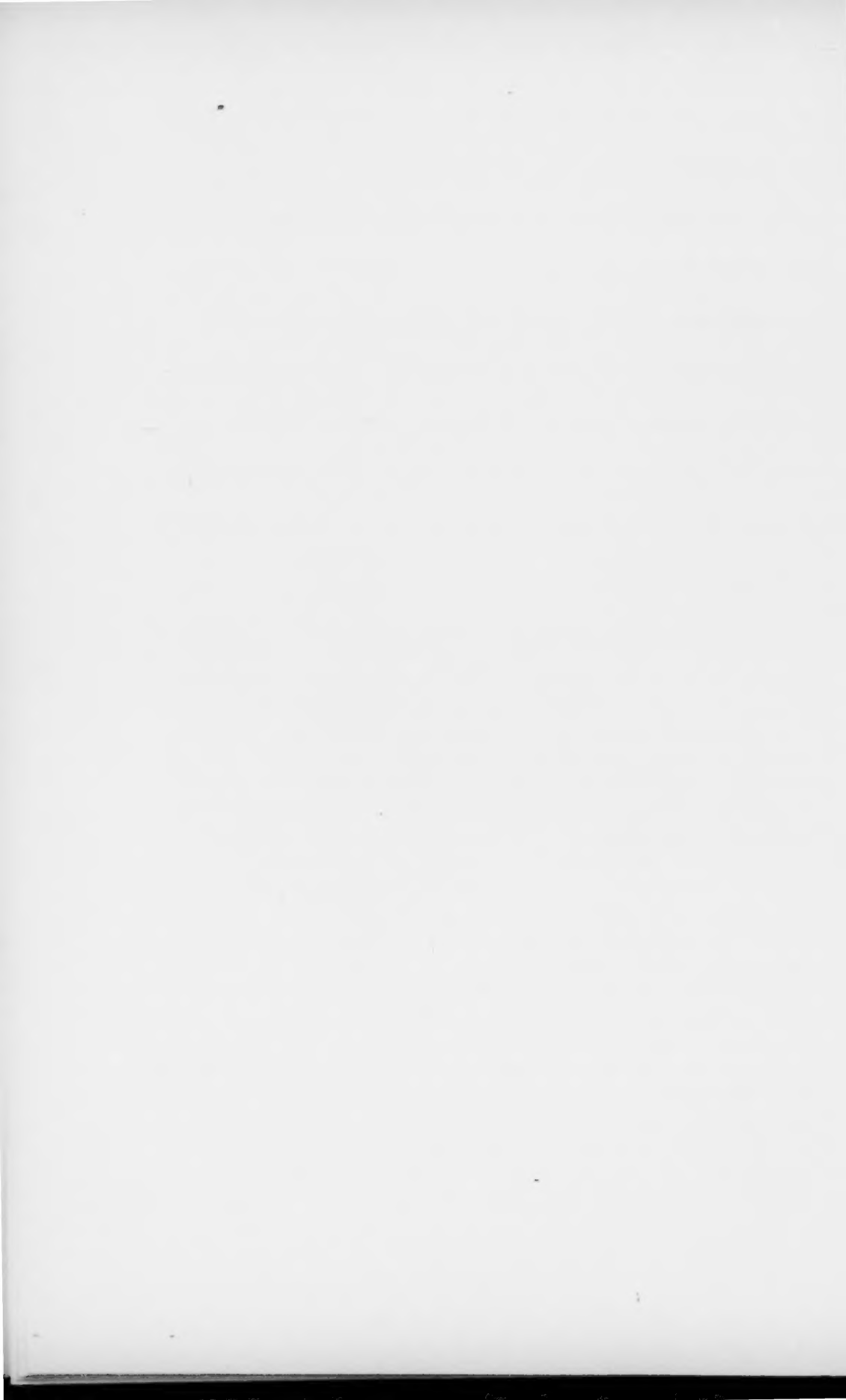


of the judicial process, including the role of a judge (id. at 66).

Under these circumstances, suppression of respondent's voluntary confession is senseless. The goal of Miranda, and the exclusionary rule in general, is to deter police misconduct.<sup>3</sup> Here, where there was no police misconduct and the detective scrupulously complied with all requirements

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<sup>3</sup>See Colorado v. Connelly, 107 S.Ct. 515, 524 (1987) ("Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment, it goes no further than that"); New York v. Quarles, 467 U.S. 649 (1984) (where statement taken during custodial interrogation was not the result of police misconduct, but rather the result of officer's concern for public safety, this Court creates public safety exception to Miranda and refuses to presume that statement is compelled because offered without Miranda warnings); Lego v. Twomey, 404 U.S. 477, 489 (1972) (since exclusionary rules are aimed at deterring lawless conduct by police, admissibility requirements should not be escalated where it would not increase the deterrence function sufficiently to outweigh "the public interest in placing probative evidence before juries for the purpose of arriving at truthful decisions about guilt or innocence").



of the law,<sup>4</sup> exclusion of this confession serves no conceivable deterrence function.

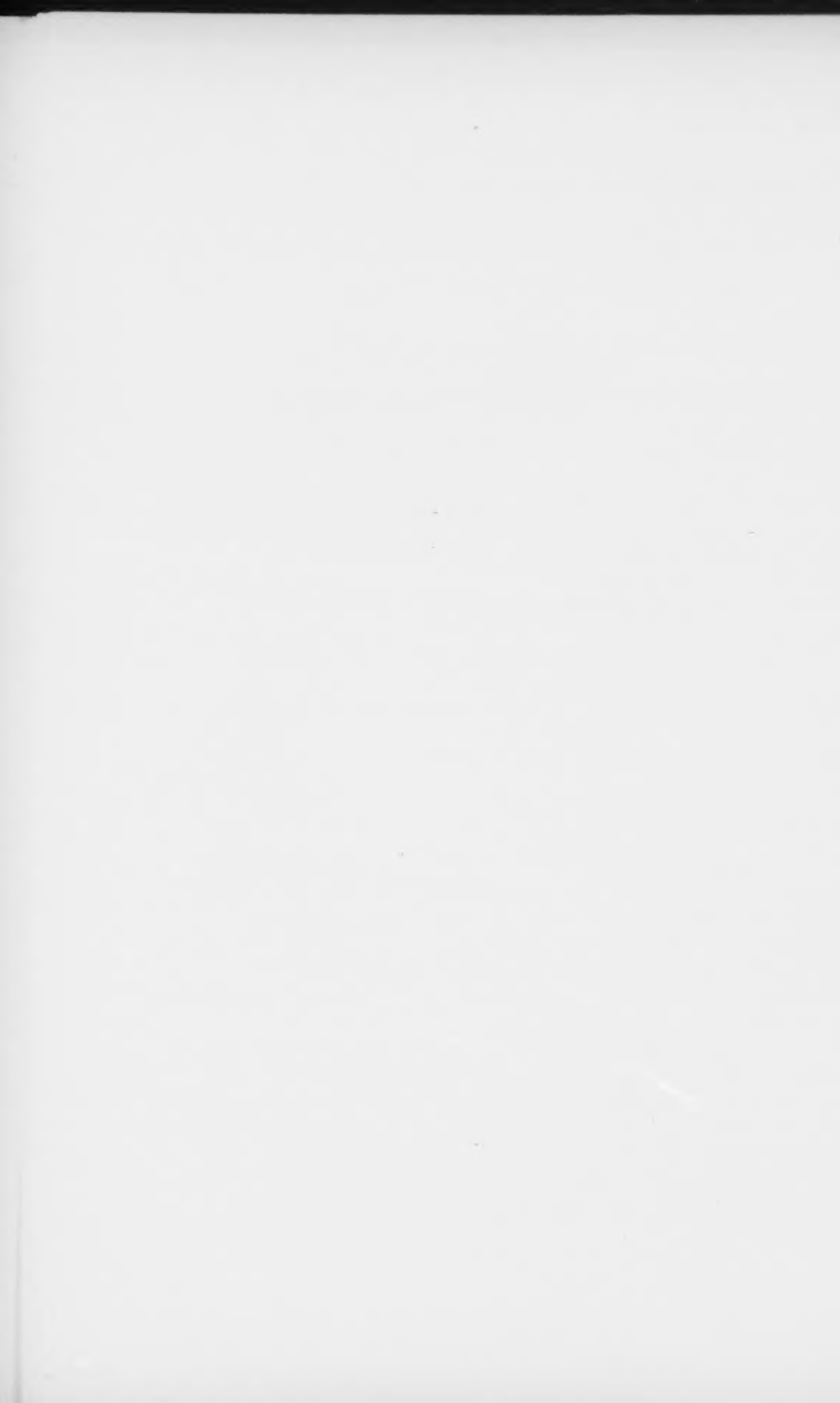
The Pennsylvania ruling requiring suppression simply because a suspect does not subjectively understand the Miranda warnings does not vindicate any constitutional right.<sup>5</sup> In Johnson v. Zerbst,<sup>6</sup> this Court held that a defendant may waive a "fundamental constitutional right" only where there is an "intentional relinquishment of a known right." The determination of whether there has been such a waiver of

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<sup>4</sup>There is, of course, no per se prohibition on police questioning of a suspect with a mental illness. Cf. Colorado v. Connelly, supra (upholding statement by a defendant with history and symptoms of mental illness similar to petitioner here).

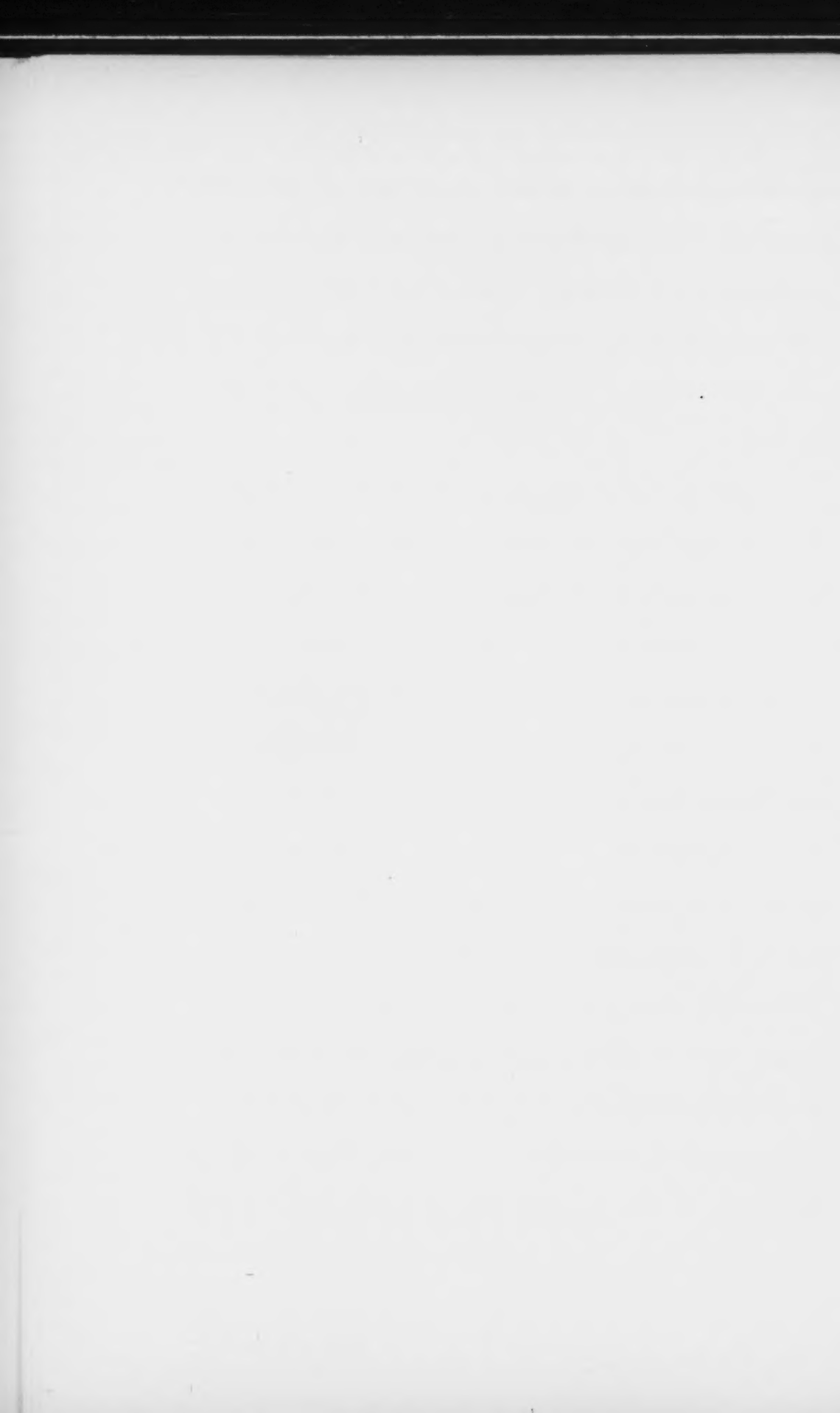
<sup>5</sup>The Pennsylvania Court held that "the court must ... focus on cognitive factors to determine if the waiver was knowing and intelligent -- i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights." Commonwealth v. Cephas, infra at 12B.

<sup>6</sup>304 U.S. 458 (1938).



a constitutional right requires an evaluation of "the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused." Johnson v. Zerbst, 304 U.S. at 464.

While this focus on a criminal defendant's subjective state of mind is proper with respect to fundamental constitutional rights, such as the right to a jury trial, or at a guilty plea, it makes no sense to apply it to Miranda warnings. Miranda warnings are not themselves constitutionally protected rights. See Moran v. Burbine, 106 S.Ct. 1135, 1143 (1986); New York v. Quarles, 476 U.S. 649, 654 (1984). There is thus no constitutional basis for requiring a Johnson v. Zerbst analysis of a defendant's subjective state of mind in determining whether there has been a proper Miranda waiver. See North Carolina v. Butler, 441 U.S. 369, 376-77 (1979) (Blackmun,

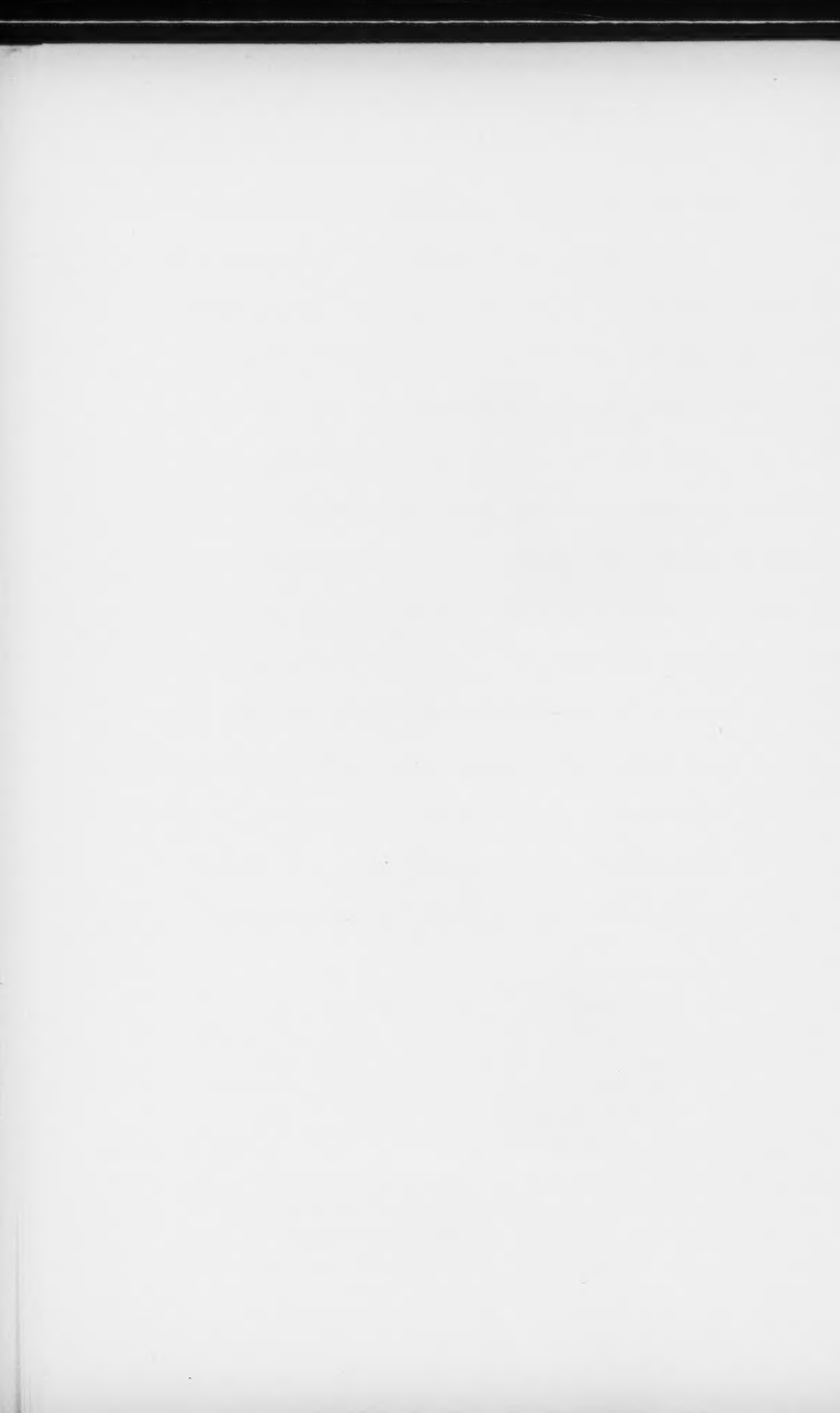


J., concurring) ("My joinder [in the opinion of the Court] ... rests on the assumption that this court's citation to Johnson v. Zerbst is not meant to suggest that the 'intentional relinquishment or abandonment of a known right' formula ... has any relevance in determining whether a defendant has waived his 'right to the presence of a lawyer' under Miranda prophylactic rule.") (citations omitted).<sup>7</sup>

Nor is a subjective Miranda waiver formula necessary to ensure that a defendant's fifth amendment rights are protected. The fifth amendment is violated only if there is "governmental coercion" which compels

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<sup>7</sup>On October 13, 1987, this Court granted certiorari in a case which raises an analogous issue concerning the relationship of the Johnson v. Zerbst waiver formula to the Miranda warnings. See Patterson v. Illinois, No. 86-7059 (cert. granted October 13, 1987). In Patterson, the issue presented is whether the Miranda warnings are alone sufficient to permit a proper waiver of the sixth amendment right to counsel in a post-indictment interrogation.



self-incrimination. See Colorado v. Connelly, 107 S.Ct. at 523. Here, however, the Pennsylvania courts have essentially held that, even where there is no governmental coercion and where a defendant's statement is in fact voluntary, the fifth amendment rights can only be protected if the defendant intelligently understood each Miranda warning.<sup>8</sup> This Court, however, has rejected the position that a custodial statement should be automatically invalidated under the fifth amendment simply because a suspect did not have knowledge of his Miranda rights before being

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<sup>8</sup>After ruling that defendant's Miranda waiver was invalid, the trial court additionally concluded that police "manipulated" defendant by complying with his requests for food, drink and a cigarette, and, therefore, that his statements were not voluntary. To the extent the trial court's findings suggest involuntariness, they are wholly unsupported by the record. The Superior Court did not consider the voluntariness issue, resting its decision on the validity of defendant's Miranda waiver.



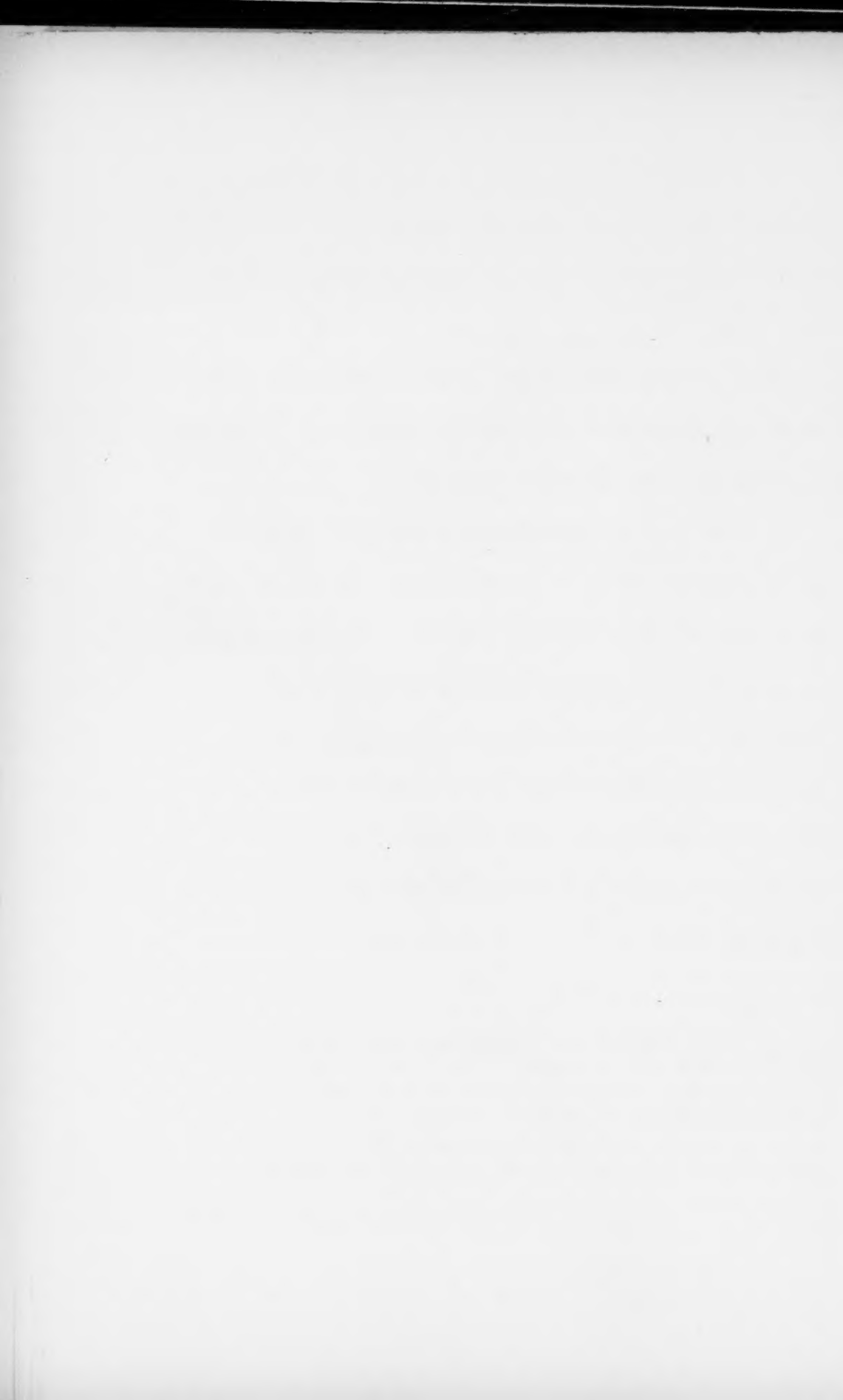
interrogated. See New York v. Quarles, supra (rejecting the argument that unwarned statements should be presumed compelled). See also Oregon v. Elstad, 470 U.S. 298 (1985) ("the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion").

The fifth amendment does not protect a defendant from a confession which is the product of his mental state. See Colorado v. Connelly, supra. The Pennsylvania Superior Court ruled that Connelly only applied to the issue of voluntariness and was irrelevant to the issue of whether defendant made a "knowing and intelligent" Miranda waiver.<sup>9</sup> This distinction is

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<sup>9</sup>The facts in Connelly are strikingly similar to this case. At the time of his confession, Connelly was diagnosed as a long-standing chronic paranoid schizophrenic, and he was delusional. The court-appointed psychiatrist testified that,

(footnote 9 continued)



specious. This Court has never held that a defendant can suppress a statement under Miranda merely by claiming that his mental problems vitiated his knowledge or intelligence rather than his voluntariness. On the contrary, the critical point is that Miranda, the fifth amendment, and due

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(footnote 9 continued)

'[W]hen he was read his Miranda rights, he probably had the capacity to know that he was being read his Miranda rights [but] he wasn't able to use that information because of the command hallucinations that he had experienced.'

Connelly, supra, 107 S.Ct. at 526. There was also evidence of the arresting officer's knowledge of Connelly's mental illness. Id., 107 S.Ct. at 529 n.3. Based on this evidence, the trial court held that Connelly's waiver of his Miranda rights was not "voluntary, knowing and intelligent" because his confession was not the product of Connelly's "rational intellect" and "free will." The Colorado Supreme Court affirmed this suppression order, likewise ruling that Connelly's mental state at the time of his confession rendered his Miranda waiver invalid. This Court reversed, finding no constitutional basis for suppression in the absence of police coercion.



process are not violated absent state action. A lack of voluntariness not resulting from police conduct is no different for constitutional purposes than a lack of knowledge or intelligence not resulting from police conduct. Here, respondent cannot claim that the police somehow prevented him from understanding, or should have known he did not understand, the Miranda warnings.

Exclusion of a trustworthy statement, obtained in the absence of police misconduct and upon a good faith belief of the investigating officer that Miranda's waiver requirements were being fulfilled, comes at a high cost to society's interest in law enforcement, while adding nothing to protect the individual's interest in not being compelled to testify against himself. This Court has specifically recognized that a cost/benefit analysis must be employed in Miranda issues, see New York v. Quarles,



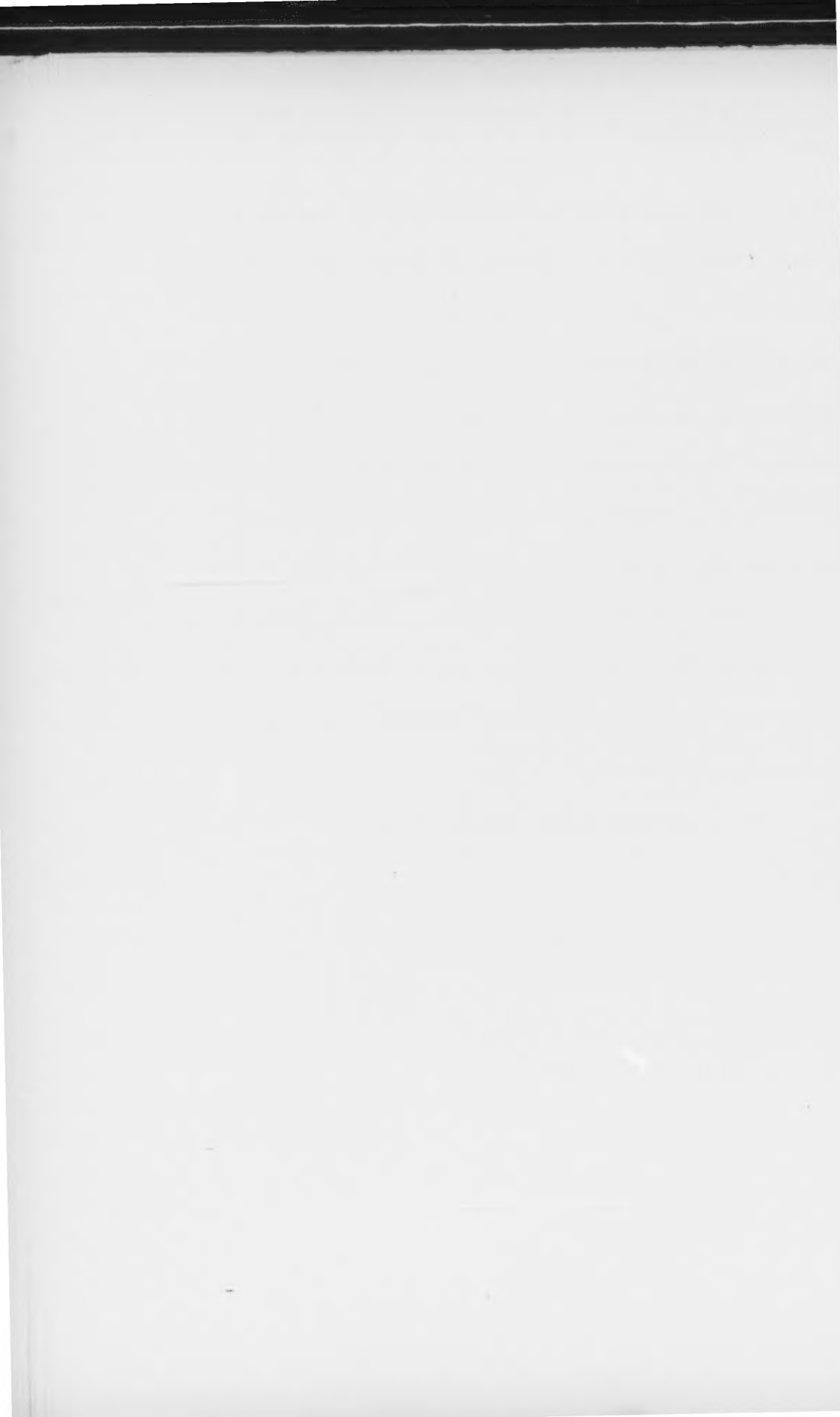
467 U.S. at 653-58, just as it is with fourth amendment violations. See United States v. Leon, 468 U.S. 897, 908-13 (1984) (as the fourth amendment exclusionary rule is designed to deter police misconduct, there is no benefit in suppressing evidence obtained in violation of a person's fourth amendment rights when no police misconduct has occurred); Massachusetts v. Sheppard, 468 U.S. 981 (1984) (same).

The case for a good faith test with Miranda claims is even more compelling than the fourth amendment context. In the fourth amendment claims, there has been an actual violation of a defendant's constitutional rights. Miranda claims, however, frequently result in suppression even where there has been no constitutional violation. See Oregon v. Elstad, 470 U.S. 298 (1985). To uphold the suppression of respondent's uncompelled confession would needlessly exclude probative evidence of guilt from



the truth seeking process in the absence of constitutionally offensive behavior. The purpose of the exclusionary rule is not to permit a defendant to litigate during a suppression hearing those issues which relate to insanity or the weight of the evidence. Defendant may raise all these issues at trial. Defendant's mental state alone should not prevent the prosecution from even bringing this rape case to trial. Suppression in this case simply serves no purpose whatsoever.

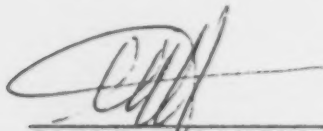
This Court must grant review.



CONCLUSION

For the foregoing reasons, the Commonwealth of Pennsylvania respectfully requests that a Writ of Certiorari issue to review the decision below.

Respectfully submitted,

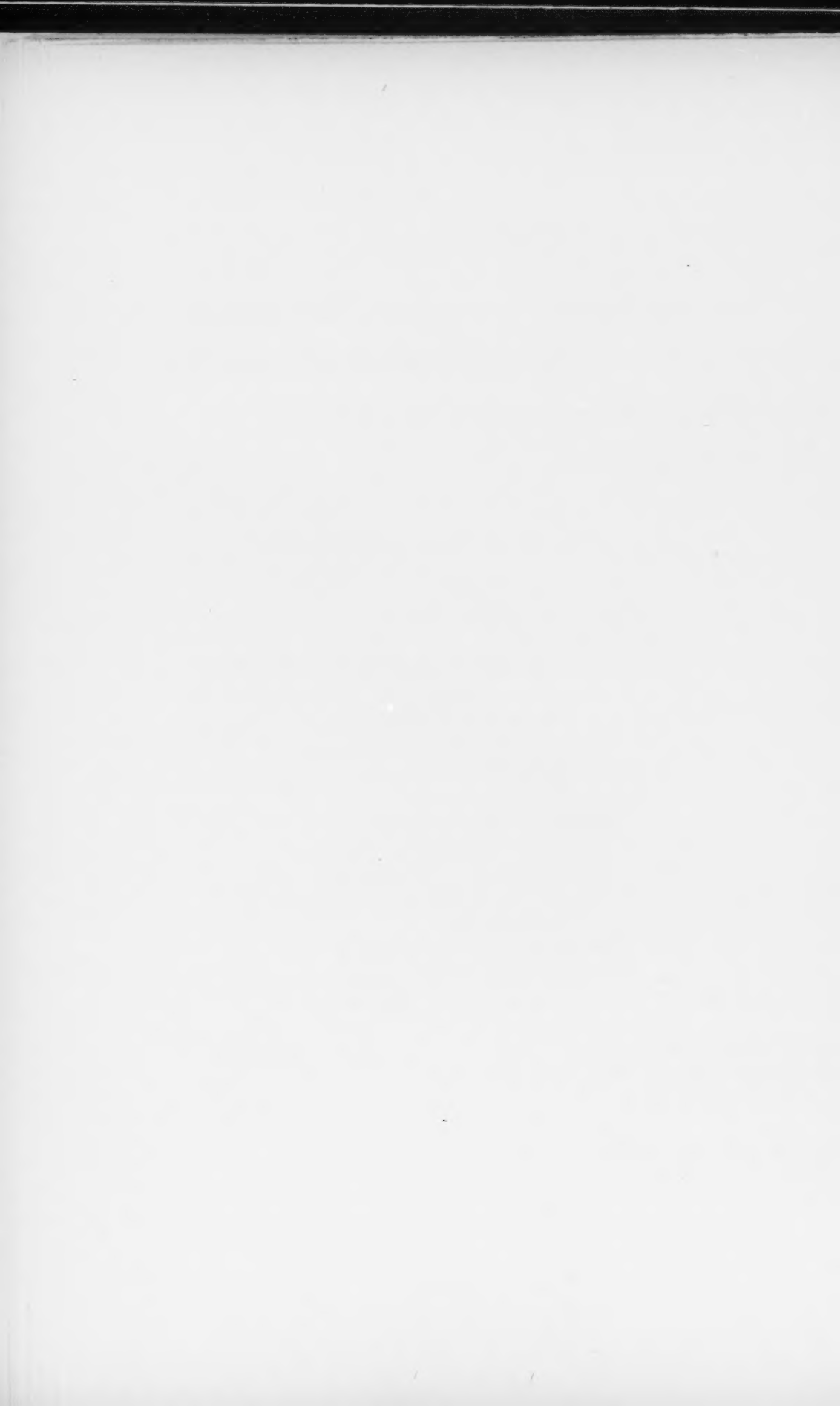


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October 19, 1987



SUPREME COURT OF PENNSYLVANIA

Eastern District

Marlene F. Lachman, Esq.  
Prothonotary

Patrick Tassos  
Deputy Prothonotary

468 City Hall  
Philadelphia,  
Pa. 19107  
215-560-6370

September 1, 1987

Gaele McLaughlin Barthold, Esq.  
Deputy District Attorney  
1300 Chestnut Street  
Philadelphia, PA 19107

Re: Commonwealth, Petitioner v.  
Michael Cephas  
No. 268 E.D. Allocatur  
Docket 1987

Dear Ms. Barthold:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

August 20, 1987

DENIED.

Per Curiam

Very truly yours,  
/s/  
Patrick Tassos  
Deputy Prothonotary

PT:ejh

cc: John W. Packel, Esq.



J. 56037/86

COMMONWEALTH OF PENN- : IN THE SUPERIOR  
SYLVANIA, Appellant COURT OF PENNSYL-  
VANIA

V. :

MICHAEL CEPHAS : NO. 02288 PHILA-  
DELPHIA 1984

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED.

By The Court:

/s/ David A. Szewczak  
PROTHONOTARY

Dated: March 4, 1987



J. 56037/86

COMMONWEALTH OF PENN- : IN THE SUPERIOR  
SYLVANIA, Appellant COURT OF PENNSYLV-  
VANIA

V. :

MICHAEL CEPHAS : NO. 02288 PHILA-  
DELPHIA 1984

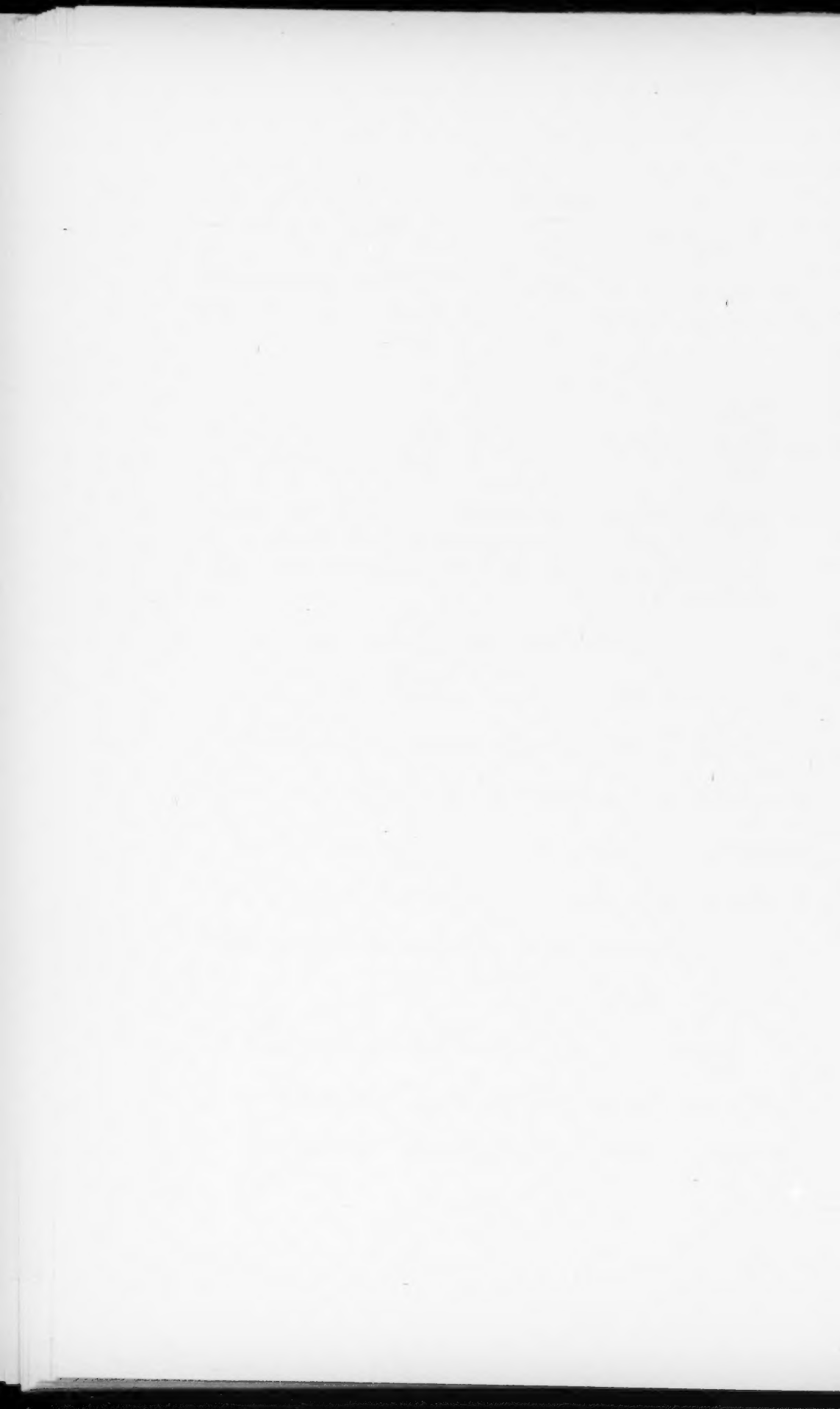
Appeal from the Order of July 18, 1984,  
in the Court of Common Pleas of Phila-  
delphia County, Criminal Division, at No.  
83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.: FILED MAR. 4 1987

The Commonwealth appeals an order  
granting a suppression motion. The court  
suppressed appellee's statements after  
finding that appellee did not knowingly  
waive his privilege against self-incrim-  
ination. We affirm.

Appellee was arrested on October 7,  
1983 and charged with rape, indecent  
assault, indecent exposure, unlawful



restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pre-trial suppression order because the Commonwealth certified in good faith that the order terminated or substantially handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).



Appellee was arrested on the basis of the victim's description. He was taken to the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitalization for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster



sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.

Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney of Philadelphia and he is white. Appellee is black.

Appellee was initially interrogated in an office by a detective who knew that appellee suffered from mental illness. During this interrogation, appellee acted



childishly. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

Appellee was interrogated again and he continued to display his childlike behavior. He was read the warnings mandated by Miranda v. Arizona, 384 U.S. 436 (1966), and he made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.

At the hearing on the motion to suppress, the Commonwealth presented an expert who



testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that appellee voluntarily chose to speak after receiving Miranda warnings. The court, on the other hand, found that appellee did not voluntarily waive Miranda; it viewed his



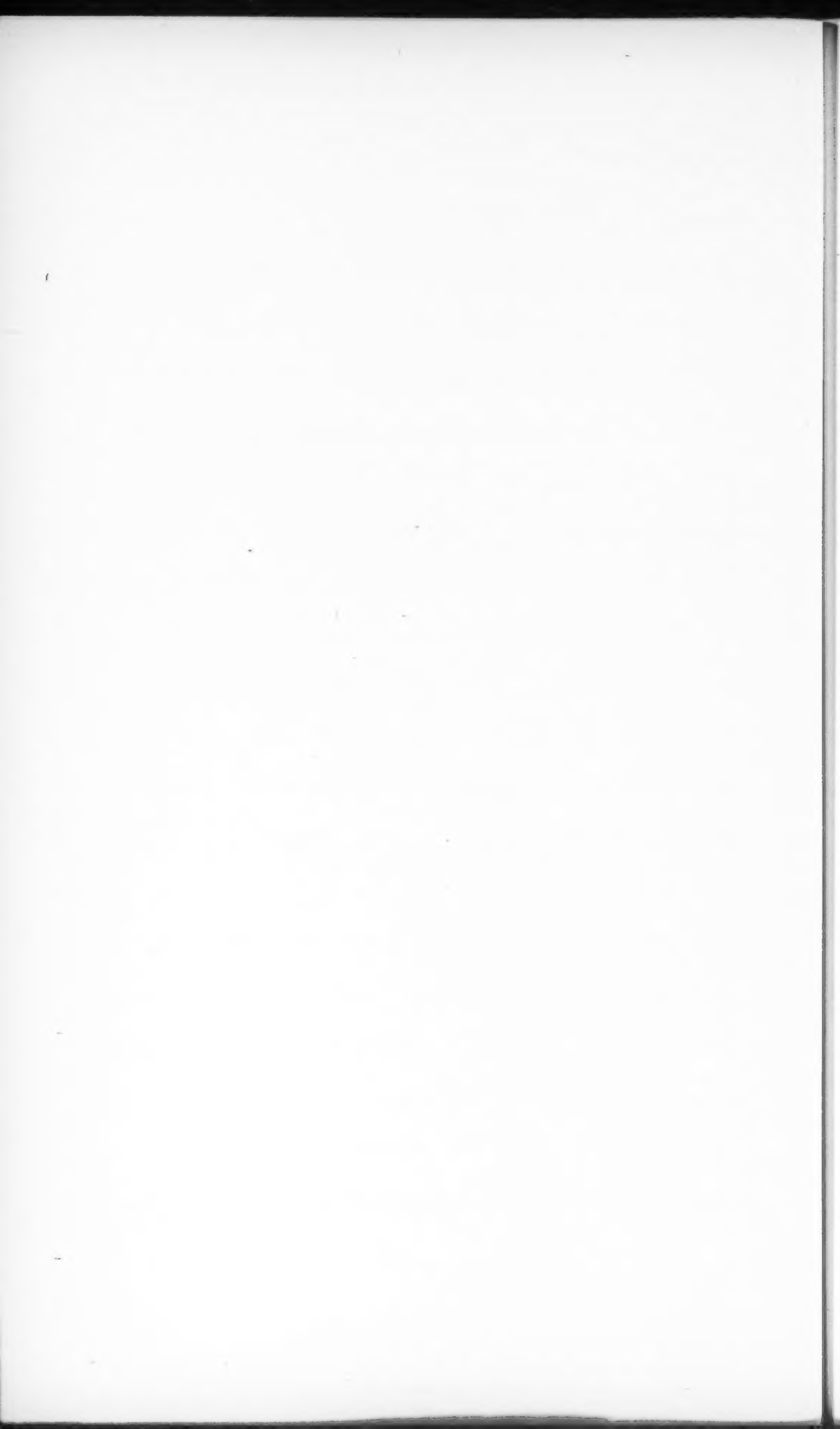
confession as the product of a deliberate effort on the part of the police detective to exploit appellee's mental weakness. We need not resolve this dispute. Regardless of whether a waiver of Miranda is voluntary, the Commonwealth must prove by a preponderance of the evidence that the waiver is also knowing and intelligent.

Miranda holds that "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." The inquiry has two distinct dimensions. First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that Miranda rights have been waived.

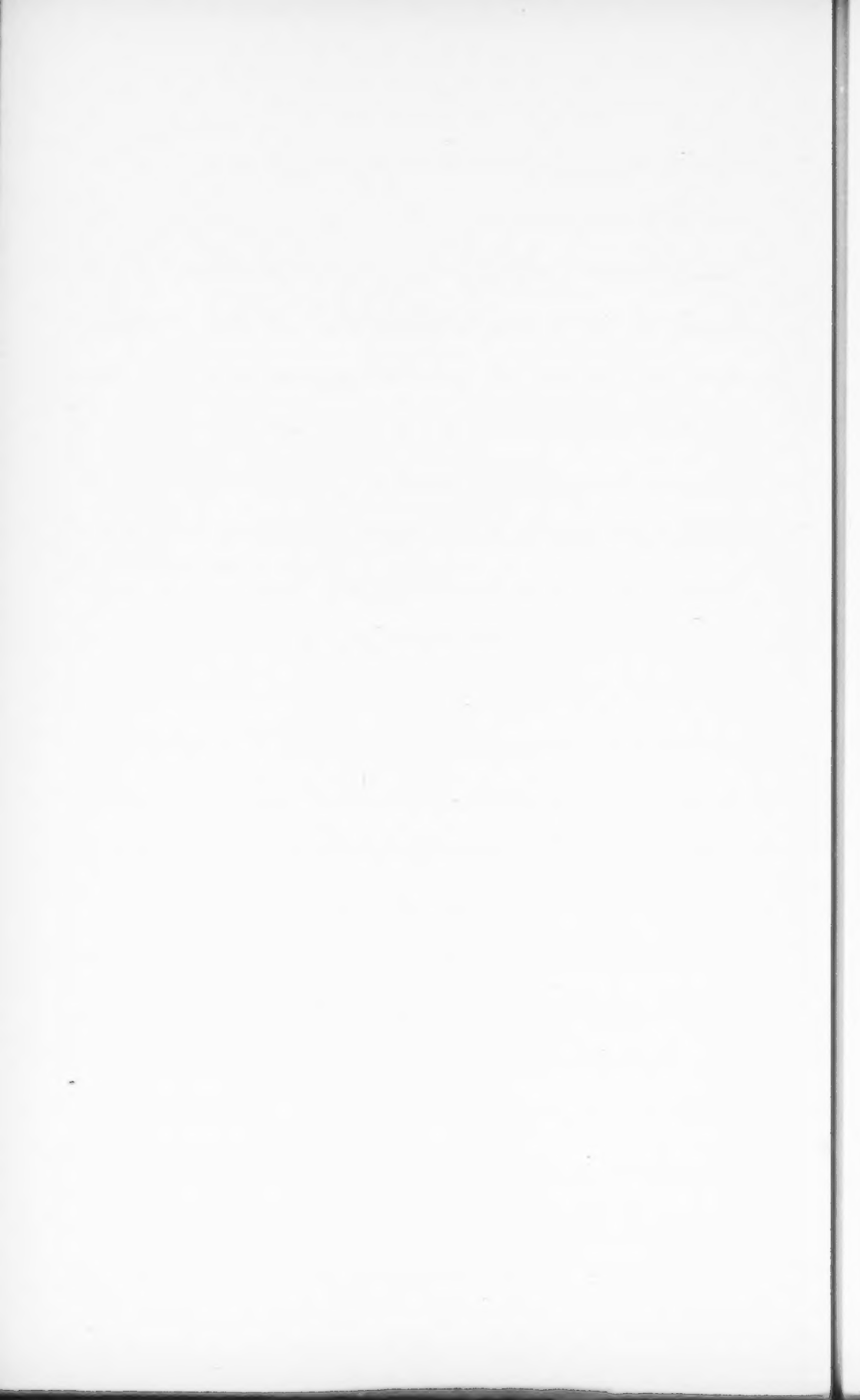


Moran v. Burbine, 89 L Ed 2d 410, 421  
(1986) (citations omitted). See also  
Edwards v. Arizona 451 U.S. 477, 484  
(1981); Tague v. Louisiana, 444 U.S. 469  
(1980); Commonwealth v. Scarborough, 491  
Pa. 300, \_\_\_, 421 A.2d 147, 153 (1980);  
Commonwealth v. Cannon, 453 Pa. 389, 309  
A.2d 384 (1973). Moreover, in reviewing  
an order granting a suppression motion,  
we are bound by the suppression court's  
findings of fact if the findings are  
supported by competent evidence. Common-  
wealth v. Hackney, \_\_\_ Pa. Super. \_\_\_,  
510 A.2d 800 (1986).

With these principles in mind, we  
affirm the suppression court. The court  
found that appellee suffered from chronic  
undifferentiated schizophrenia and that  
this mental illness prevented him from  
understanding the Miranda warnings. The



court also found that appellee was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. Therefore, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that a Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this testimony only created a credibility issue. It is exclusively the province of the suppression



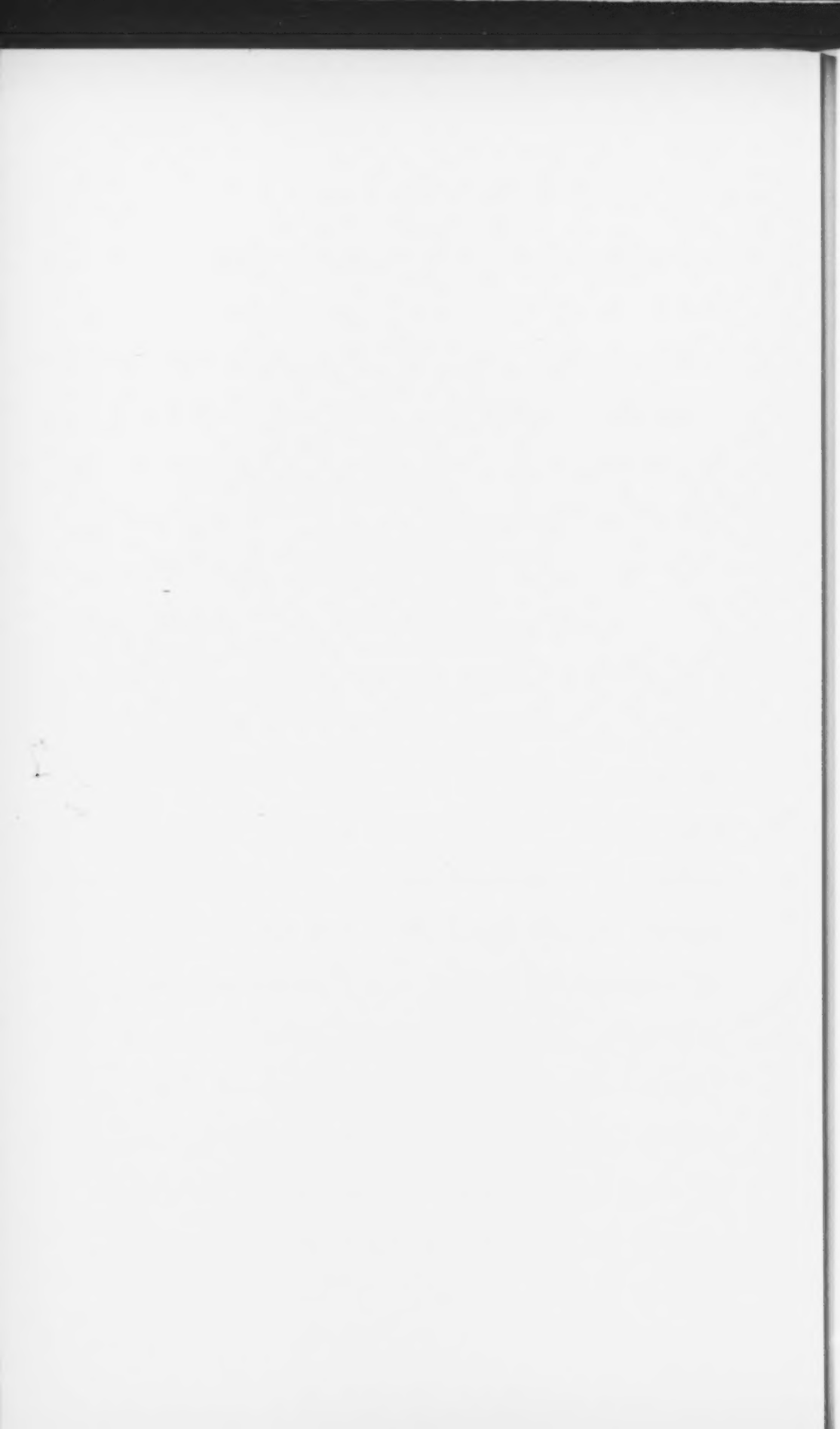
court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, \_\_\_\_, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983).

Finally, the Commonwealth contends that this case is controlled by Colorado v. Connelly, 93 L. Ed. 2d 473 (1986). In Connelly, a mentally ill defendant waived his Miranda rights because he believed that he was compelled to do so by the "voice of God." Id. at 480. The United States Supreme Court held that under the federal constitution this waiver would not be found to be involuntary in the absence of misconduct on the part of government officials. The Court, however, did not purport to decide whether Connelly's waiver



was knowing and intelligent. See Id. at 487 n. 4 (majority opinion) and at 488 n.5 (Brennan, J., dissenting). This remains a distinct and independent requirement for the admission of a confession into evidence. See Colorado v. Spring, 55 U.S.L.W. 4162, 4165 (U.S. Jan. 27, 1987).

In summary, federal law requires that a suppression court undertake a two step inquiry into the validity of a Miranda waiver. The court must first determine whether the waiver was voluntary in the sense of being the result of an intentional choice on the part of a defendant who had not been subject to undue governmental pressure. The court must then focus on cognitive factors to determine if the waiver was knowing and intelligent - i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights.



In the case sub judice, the trial court found on the basis of credible evidence that appellee's confession was not made knowingly because he was incapable of comprehending the meaning of the Miranda warnings at the time he was interrogated. Accordingly, we affirm the suppression order. Cf. State v. Daily No. 16997, slip op (W. Va. Dec. 16, 1986) (senile defendant with low intelligence and hearing loss did not knowingly waive Miranda).

Order affirmed.

Olszewski, J. files a Concurring Opinion.



J. 56037/86

COMMONWEALTH OF PENN- : IN THE SUPERIOR  
SYLVANIA, Appellant COURT OF PENNSYLV-  
VANIA

V. :

MICHAEL CEPHAS : NO. 02288 PHILA-  
DELPHIA 1984

Appeal from the Order of July 18, 1984,  
in the Court of Common Pleas of Phila-  
delphia County, Criminal Division, at No.  
83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.:

FILED: MAR. 4, 1987

Though agreeing with the  
majority's disposition of this particular  
case, I write separately to emphasize that  
this decision is limited to the facts of  
this case. The majority's holding does  
not establish a per se rule that an accused  
is incapable of waiving his constitutional  
rights whenever he asserts that he is  
suffering from a mental illness. Both this  
Court and our Supreme Court have



recognized that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa.Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional rights merely because he suffers from a mental illness. The trial judge must



thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover,  
supra.



J. 56037/86

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J U D G M E N T

ON CONSIDERATION WHEREOF, it is now  
here ordered and adjudged by this Court  
that the judgment of the Court of Common  
Pleas of PHILADELPHIA County be, and the  
same is hereby AFFIRMED.

BY THE COURT:  
/s/David A. Szewczak  
Prothonotary

Dated: DECEMBER 15, 1986



J. 56037/86

COMMONWEALTH OF PENN- : IN THE SUPERIOR  
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BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.: FILED DEC. 15, 1986

The Commonwealth appeals an order  
granting a suppression motion. The court  
suppressed appellee's statements after  
finding that appellee did not knowingly  
waive his privilege against self-incrim-  
ination. We affirm.

Appellee was arrested on October 7,  
1983 and charged with rape, indecent  
assault, indecent exposure, unlawful



restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pre-trial suppression order because the Commonwealth certified in good faith that the order terminated or substantially handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).

Appellee was arrested on the basis of the victim's description. He was taken to



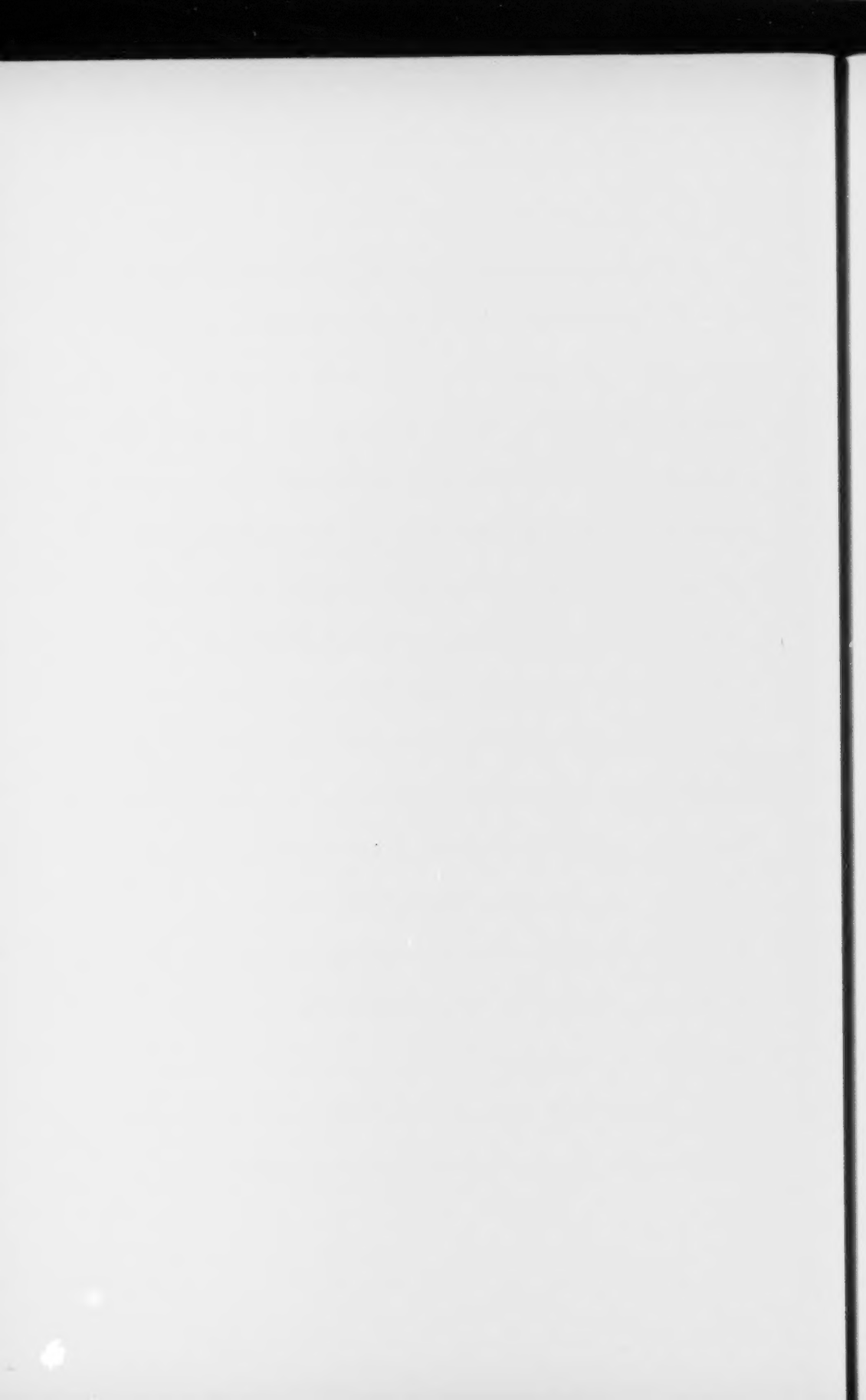
the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitalization for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.



Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney and he is white. Appellee is black. A photograph taken of appellee while in custody reflects his reaction to his arrest.

Appellee was initially interrogated in an office by a detective who knew that



appellee suffered from mental illness. During this interrogation, appellee acted childishly and manipulatively. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

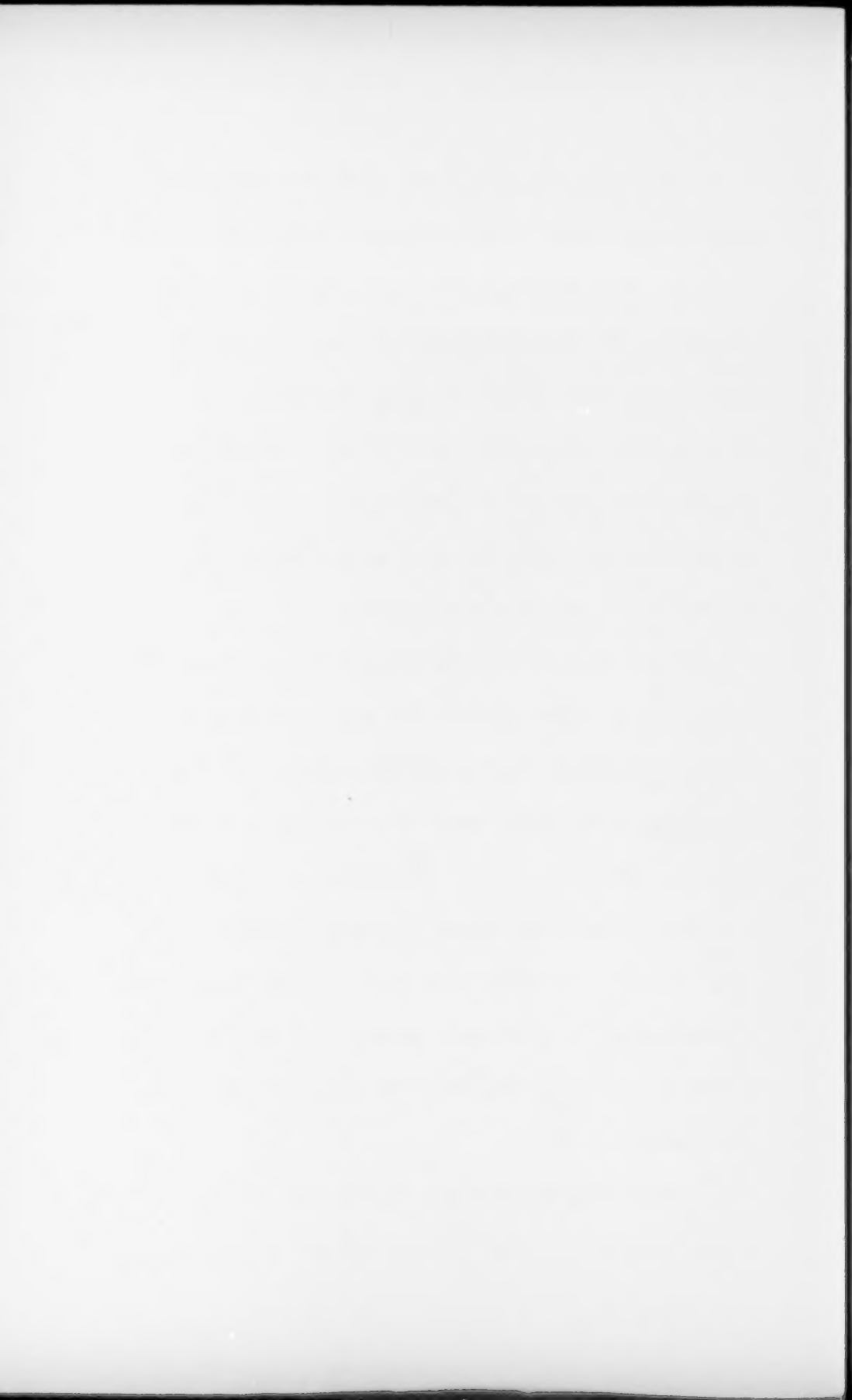
Appellee was interrogated again and he continued to display his childlike behavior. He was read his Miranda warnings and made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.



At the hearing on the motion to suppress, the Commonwealth presented an expert who testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that it complied with the mandates of Miranda v.



Arizona, 384 U.S. 436 (1966) and that the statements obtained from appellee should be admissable at trial. Although the Commonwealth fervently argues that the Miranda rules were observed, the court found otherwise and concluded that appellee's statements were involuntary. We need not, however, review this finding. Aside from compliance with Miranda, the Commonwealth must also prove by a preponderance of the evidence that the accused knowingly and intelligently waived his Fifth Amendment privilege for statements that are the product of custodial interrogation to be admissable. Tague v. Louisiana, 444 U.S. 469 (1980); Johnson v. Zerbst, 304 U.S. 458 (1938); Commonwealth ex rel. Butler v. Rundle, 429 Pa. 141, 239 A.2d 426 (1968). Moreover, the Common-



wealth must show that the accused was competent to make a knowing and intelligent waiver when the accused claims a lack of competence. See Commonwealth v. Cannon, 453 Pa. 389, 309 A.2d 384 (1973); LaFave & Israel, CRIMINAL PROCEDURE § 6.9(b), at 307 (1985). Also, in reviewing an order granting a suppression motion, we are bound by the suppression court's findings of fact if the findings are supported by competent evidence. Commonwealth v. Hackney, \_\_\_\_\_ Pa. Super. \_\_\_\_\_, 510 A.2d 800 (1986).

With these principles in mind, we affirm the suppression court. The court found that appellee suffered from chronic undifferentiated schizophrenia and that this mental illness prevent appellee from understanding the Miranda-warnings. The court also found that appellee was incapable of making a knowing and



intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. As such, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this



testimony only created a credibility issue. It is exclusively the province of the suppression court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, \_\_\_, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983).

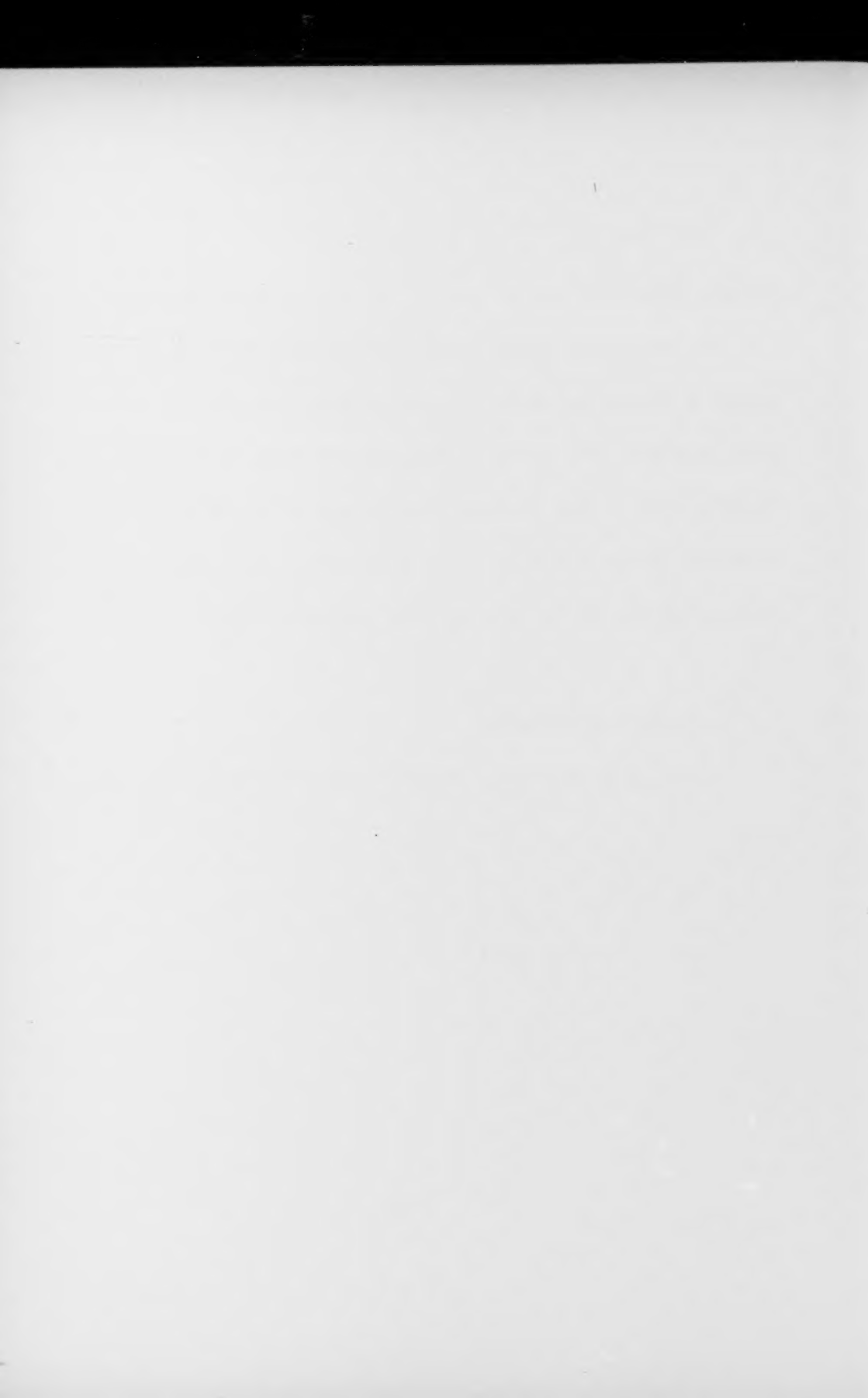
The Commonwealth strenuously argues that the statements should be admitted because it complied with the Miranda requirements. Whether or not the Commonwealth complied with Miranda is not relevant. If the Commonwealth sustained its burden to prove compliance with Miranda, it had to also prove that a waiver was made knowingly and intelligently.



Under these facts, part of this burden was to prove that appellee was competent to make a knowing and intelligent waiver. The burden to show competence was not met. Therefore, the burden to show a knowing and intelligent waiver was not met, and the statements were correctly suppressed.

Order affirmed.

Olszewski, J., files Concurring Opinion.



J. 56037/86

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BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.:

FILED: DEC. 15, 1986

Though agreeing with the majority's  
disposition of this particular case, I  
write separately to emphasize that this  
decision is limited to the facts of this  
case. The majority's holding does not  
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is incapable of waiving his constitutional



rights whenever he asserts that he is suffering from a mental illness. Both this Court and our Supreme Court have recognized that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa. Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional



rights merely because he suffers from a mental illness. The trial judge must thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover,  
supra.



At this time I will give you my Findings of Fact. There will be no Findings of Fact on the issue of probable cause to arrest the defendant as that issue is not seriously challenged by the defendant at no time. Someone can always re-file.

The Findings of Fact will all relate to the defendant's capabilities of knowingly and voluntarily waiving his constitutional rights.

The Findings of Fact are as follows:

One, Michael Cephas, 23-year-old defendant was arrested on October 7th, 1983, was on the streets of the City and County of Philadelphia.

Two, following his arrest he was taken to the Sex Crimes Unit, Frankford and Castor Avenues and placed in a small detention room in handcuffs in anticipation of questioning about a



reported rape at the chapel at the University of Pennsylvania Hospital on 7/29/83. He, at the time of his arrest and detention, Michael had an extensive history of profound mental illness. He had consistently been diagnosed as a schizophrenic of the most serious type.

Michael spent from October the 7th, 1982 to November the 5th, 1982 at Philadelphia Psychiatric Center. Again in August of 1983 he was taken to Saint Mary's Hospital by the Philadelphia police where he was found naked on a scaffold sixty feet up in the area of City Hall.

On September 21st 1983, he was again taken by the police to Saint Mary's because he was up in a tree and by an elementary school screaming at the school children and yelling for the principal to meet his demands. According to the



records of Saint Mary's Hospital that was his fourth hospital admission for psychiatric psychotic episodes in that institution alone.

The Court notes the proximity in time of his arrest of October the 7th.

Four, at the time of his arrest Michael was a street person. He lived in an alley not far from the home of his foster family. In this alley he kept a series of costumes neatly arranged in bags and stacks. He has been known by police to dress as Moses, a preacher, a lumberjack who could climb buildings and trees and punk rocker.

Five, when the arresting officers came to observe the alley where Michael lived his foster sister begged the officer to find help for Michael and to have him put away somewhere for his mental illness.



Six, Michael's behavior when he was at the interrogation by the police at the police headquarters and during his confinement in the detention room was bizarre and psychotic. The entire time he was put in a small detention room, handcuffed, he kicked the door, walls and kept yelling inane comments, including that he was Ed Rendell's son, that he had dinner with his father the night before at Mr. Rendell's home. Mr. Rendell who is the D.A. for the City and County of Philadelphia.

Seven, the photograph taken of Michael when he was taken into custody reflects his reaction to this predicament.

Eight, during the first interrogation Michael acted very childishly and manipulatively. He refused to sit down



unless he was given a cigarette. He wanted the police to give him a soda and cookies. He was unable to take the questioning seriously. And the interrogating officer finally abandoned the interview believing him to be pompous.

Nine, during the absence of the assigned detective Michael continued his earlier impulsive childhood behavior again in the detention room.

Ten, the assigned detective during her absence was unable to obtain an identification of Michael by his alleged victim despite the fact that the victim had been face-to-face with her assailant for forty-five minutes and had earlier provided data to a police artist which resulted in a



positive sketch which led to Michael's arrest and detention.

Eleven, the assigned detective knew that upon her return to the Sex Crimes Unit that unless Michael confessed to the crime she would have to release him.

Twelve, Michael stopped hollering and banging, but when he was released from the Detention Center he did, however, continue child-like behavior. He did, for example, remain standing despite instructions to sit and he continued his defiance until he was prodded by a cigarette. He was moreover given cookies and soda to reinduce him to adopt a more cooperative attitude.

Thirteen, prior to his being given cigarettes, cookies and soda, Michael was read the Miranda Warnings to which he



gave verbal responses ostensibly suggesting he wished to surrender his right to remain silent and/or to counsel.

Fourteen, Michael's psychosis includes a split personality. The other person inhabiting Michael's body is named Johnny Johnson.

Fifteen, prior and during Michael's interview the assigned detective knew that Michael was suffering from a profound major mental illness.

Sixteen, the assigned detective skillfully manipulated Michael's mind through a process of reward and punishment.

Seventeen, Michael was held for a series of suggestive and leading questions which resulted in his making an incriminating statement.



Eighteen, despite continued cajoling by the assigned detective, Michael refused to sign the statement because he was no longer receiving any reward or punishment.

Nineteen, the expert testimony was in agreement on one point, and that was that Michael is suffering with serious schiizophrenia. His behavior during the interrogation is consistent with this diagnosis.

All experts agree that medication can help control such symptoms but there is no substantial evidence this Court found credible that any drugs had been administered to this defendant and his behavior at the time of the interviews suggest just the opposite.

Twenty, Michael's conduct during the interrogation shows conclusively that he did not appreciate legal jeopardy of this



position. His childish and manipulative behavior and long history of mental illness is convincing he is not in touch with reality of the situation and he could not understand the significance of his so-called Miranda Warnings or competently waive his rights to remain silent or to have counsel present.

Conclusions to be drawn from the following Findings of Fact is that the defendant, Michael Cephas, was not capable of knowingly and voluntarily waiving his constitutional rights when he made the statement to the police after receiving his so-called Miranda Warnings.

The Commonwealth had the burden to prove by the preponderance of the evidence the defendant's statement was a knowing and voluntary waiver of his right not to incriminate himself. The Commonwealth



did not meet that burden in the Court's view.

It is, of course, my responsibility to determine credibility and weight of the witnesses before their testimony. The Court is mindful of a line of cases which suggest in these cases that mentally ill people can voluntarily surrender their right. Notwithstanding that case, the Court is satisfied with this decision in this particular case Michael was incapable at the time that he was interviewed to waive his rights.